RECORD, CASE No. 13,507.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 339.

THE CITY OF CLAY CENTER, KANSAS, APPELLANT,

vs.

THE FARMERS' LOAN AND TRUST COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED MARCH 8, 1889.

RECORD, CASE No. 13,507.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 339.

THE CITY OF CLAY CENTER, KANSAS, APPELLANT,

vs.

THE FARMERS' LOAN AND TRUST COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A—Contract and ordinance for water works for the city of Clay Center, Kansas	14	7
B—First-mortgage bond and coupons	18	17
C—Agreement between Clay Center Water Co. and Farmers' Loan and Trust Co., January 10, 1885	25	24
Subpœna	60	40
Marshal's return	61	41
Appearance for defendant	62	41
Answer	63	42
Exhibit A—Journal of city council	68	45
Replication	74	48
Stipulation as to testimony and submission	75	48
Evidence	76	49
Subpœna to witnesses	76	49
Testimony of O. F. Lutt	77	50
Subpœna to witnesses	82	54
Testimony of W. J. Carson	83	55
Ira J. Flood	92	61

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 19, 1892.

	Original.	Print.
Testimony of A. A. Goddard	98	64
J. M. Frank	104	68
F. B. Dawes	114	74
J. M. Grubs	120	78
C. E. Gifford	132	85
L. J. Warren	147	94
Transcript of minutes of the city council	155	99
Stipulation as to evidence and facts	209	139
Opinion of supreme court of Kansas in Sullivan & Co. *vs.* School District No. 39, &c.	213	141
Final decree	218	144
Allowance of appeal	220	145
Bond	221	145
Clerk's certificate	223	147
Citation	224	147
Proof of service of citation	225	148

1 In the Supreme Court of the United States.

THE CITY OF CLAY CENTER, Appellant,
vs.
THE FARMERS' LOAN & TRUST CO., Appellee.

Be it remembered that in the circuit court of the United States for the district of Kansas The Farmers' Loan & Trust Company brought its certain bill against The City of Clay Center, Kansas, and The Clay Center Water Company, defendants, a true copy of which follows hereto, and thereafter pleadings and proceedings were had in words and figures as follows, to wit:

2 In the Circuit Court of the United States for the District of Kansas.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTER, KANSAS, and THE CLAY CENTER WATER COMPANY, Defendants.

To the honorable judges of said court:

The Farmers' Loan and Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State of New York, brings this bill against The City of Clay Center, a municipal body corporate, known as a city of the second class, organized under and by virtue of the laws of the State of Kansas, and The Clay Center Water Company, a corporation organized under the laws of the State of Kansas and citizens of said State of Kansas, and, humbly complaining, shows unto the court—

First. That the amount in controversy herein exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

Second. That on or about the first day of January, 1884, the said city of Clay Center was desirous of having erected and constructed within the corporate limits of said city water works to furnish to the inhabitants of said city a supply of water for domestic, mechanical, and other purposes, and also to furnish and supply said city with water and facilities for employing the same for the purpose of the prevention and extinguishment of fires; that thereupon said city entered into negotiations with one John E. Bonebrake, repre-

3 sentative and agent of the Holly Water Company of New York, a corporation organized and existing under the laws of the State of New York, for the purpose of constructing works, furnishing machinery, and laying mains and service pipe for what is known as the Holly system of water works; that afterwards said city, by its proper officers, concluded to adopt said system, and thereupon entered into a contract with the said John E. Bonebrake, the agent and representative of said Holly Water Company, by first duly passing and adopting an ordinance, being ordinance No. 64 of said city and entitled "An ordinance to provide a system of water

works and supply of water to the city of Clay Center and the inhabitants thereof." By the terms of said ordinance there was given and granted to the said John E. Bonebrake, of Abilene, Kansas, his successors and assigns, the exclusive right and privilege, for the term of twenty years from the date of the adoption of said ordinance, of supplying to the city of Clay Center and the inhabitants thereof, by a system of water works, water for domestic purposes and for the extinguishment of fires and for other purposes set forth in said ordinance.

That said ordinance contained all and *sungular* the usual and necessary provisions to impose upon the said Bonebrake, his successors and assigns, the duties and obligations of furnishing an abundant supply of good water for the purposes above designated, and was made in the nature of a contract with the said Bonebrake, his successors and assigns, conditional with his acceptance of the provisions thereof and executing a contract in conformity therewith, and that afterwards said ordinance was duly passed, approved, and published and became an ordinance of the city of Clay Center, Kansas; and thereupon the said Bonebrake executed his certain written contract with the said city of Clay Center, and the said city of Clay Center in turn executed its certain written contract
4 with the said John E. Bonebrake, which said contract embodies and contains said ordinance, and duly ratified, approved, and accepted the terms of the same; and the said city on its part conveyed all rights, privi*l*ages, and franchises and confirm*es* and ratified all promises and agreements in said ordinance contained on its part; and the said John E. Bonebrake assumed all duties, liabilities, and obligations on his part and duly ratified and confirmed all promises and agreements required of him by said ordinance, and the said contract, after being duly executed, was by the said city of Clay Center duly delivered to the said John E. Bonebrake. A copy of said contract is hereunto annexed, marked "A," and referred to as part of this bill of complaint the same as if the said contract were herein fuliy set out *in hæc verba*.

It was provided, among other things, in said ordinance that the city of Clay Center agreed to rent and did rent of the said Bonebrake, his successors and assigns, forty double-nozzle hydrants, to be located on said pipes and mains as the council might by resolution direct, at an annual rental of one hundred dollars each, payable semi-annually on the first days of January and July of each year: Provided, however, that said rental for the first year after the completion thereof shall be thirty-four hundred dollars, and for the second year thirty-seven hundred dollars, to be paid semi-annually as aforesaid, and for each and every year after the two years the annual rental of each of said hydrants shall be one hundred dollars, payable as aforesaid, without discount; and the said Bonebrake, his successors and assigns, shall extend said mains and pipes at any time ordered to do so by the mayor and council of the said city of Clay Center.

Provision was also made in said contract, to which reference
5 is hereby made, for the erection of other and additional hydrants for the use of said city and for the prevention and

extinguishment of fires and for other purposes, as the said city might need and require and demand the construction of the same; and said ordinance provided for a fixed term of water rates for all the various purposes for which water might be used.

It was further provided in said ordinance that the said city should have the right to use certain water free of charge from said hydrants for sanitary and other purposes, and should also be furnished water for city purposes at the public buildings of said city. It was further provided in said ordinance and contract, to which reference is hereby made, that said water works should be subjected to certain tests as to pressure and volume, which test should be made to the satisfaction of said city before the acceptance by said city of said water works.

It was understood by and between the said city of Clay Center and the said John E. Bonebrake that there was to be organized a corporation under the laws of the State of Kansas, to whom the said Bonebrake should convey all rights, privileges, and franchises embodied in his said contract, and that the said corporation would borrow money upon its negotiable bonds to construct said water works, and that the said corporation should construct said water works and assume the duties, liabilities, and obligations and enjoy the privileges and franchises granted to the said Bonebrake, and as an inducement for the construction of said water works and to promote the construction of the same and to secure the loan of money by said corporation contemplated by the said city and by the said Bonebrake at the time of the passage of said ordinance and the execution of said contract there was embodied in said ordinance the following provision: It was provided and agreed by the said Bonebrake, his successors and assigns, and the said city of Clay
6 Center that in the event it be deemed necessary in the construction or extension of said water works to issue first-mortgage bond- upon said water works, property, or extension, either or all, that so much of the hydrant rental to be paid by the said city of Clay Center under the provisions of said ordinance as will fully pay the interest on said bonds shall be paid to the holders of such bonds by their trustee semi-annually, on the first days of January and July of each year, until said bonds are paid, and that the balance of the hydrant rental which the city of Clay Center agrees to pay shall be paid to the said Bonebrake, his successors and assigns, it being understood that the hydrant rental which the city of Clay Center agrees to pay to the said Bonebrake, his successors and assigns, for fire protection, or so much of said amount as shall be necessary to pay the interest on such bonds, shall be set aside and paid to the trustee of such bonds and by him used exclusively and only to pay the interest upon said bonds when and so long as the same shall become due and payable.

It was further agreed in said ordinance that when said bonds should become fully paid and cancelled, then the hydrant rental due from said city should be paid to said Bonebrake, his successors and assigns.

It was further agreed that the city of Clay Center should not pay

to the trustee for such interest a sum greater than the amount agreed to be paid John E. Bonebrake, his successors and assigns; and it was further agreed that in no case should the city become liable for the misappropriation of money paid to the trustee. It was further agreed that if there should be no trustee such payments might be made to the owners of said bonds.

That in pursuance of the agreement, understanding, and knowledge of said city of Clay Center the said Clay Center Water
7 Company was duly organized under the laws of the State of Kansas, and by assignment and transfer, with the knowledge, approbation, and consent of the said city of Clay Center, possessed all franchises and privileges granted by the said city by said ordinance and assumed the duties, liabilities, and obligations imposed by said ordinance, and the said water-power company was duly recognized by the said city as an assign of John E. Bonebrake, and with the knowledge, approbation, and consent of the said city, through its mayor and council, proceeded to erect and construct the water works in all respects as provided and required by said ordinance, and when constructed caused the same, in the presence of said city, by its proper officers, to be subjected to the test required by said ordinance; and thereupon, after duly testing and inspecting the same, the said city of Clay Center duly accepted said water works and recognized the same as being constructed in accordance with the provisions of said ordinance.

That for the purpose of erecting and constructing the same, and with the knowledge, consent, and approbation of the said city, through its proper officers, the said Clay Center Water Company issued its certain bonds, negotiable in form, to the amount of sixty thousand dollars, and to secure the same executed its certain trust deed to your orator in trust for the holders of said bonds, which were duly certified and delivered to your orator as trustee as aforesaid, in conformity to said trust deed, which said trust deed was executed and delivered coincidentally with the execution and delivery of said bonds to your orator as trustee; that said bonds were sold and negotiated to divers and sundry persons, who are now the owners and holders of the same, and the proceeds and avails arising from said bonds were used and employed by said Clay Center Water Company in the construction of said water works.

8 Your orator further alleges and shows unto the court that said city of Clay Center has from the time of the construction and acceptance of said water works fully had, enjoyed, and possessed the use and protection thereby conferred, and the said Clay Center Water Company has in all things complied with said ordinance hereinbefore set out and with all ordinances and requirements by the said city touching and concerning the operation of said works, and, notwithstanding the default hereinafter referred to, the said Clay Center Water Company has in all things complied with said ordinance with reference to the construction of hydrants and placing the same in number and of the kind at points designated and required by the said city as provided in said ordinance, and has ever since the completion of said water works and is now furnishing said city

water of said hydrants for the prevention and extinguishment of fires, and water free of charge for sanitary and other purposes, and water free of charge for city purposes at the public buildings of said city, in all respects and fully as required by said ordinance; that under and by virtue of the terms of the said ordinance the said city of Clay Center was required to pay thirty-seven hundred dollars for the second year for hydrant rental, which by the terms of said ordinance was set apart and appropriated expressly for the payment of the interest upon the bonds aforesaid, and became and was payable to the trustee, your orator, directly to be applied towards the payment of the coupons.

Your orator further shows unto the court that in the trust deed aforesaid the said ordinance was fully set out, and the said hydrant rental in said ordinance made and appropriated as aforesaid was in terms set over and transferred to said trustee, under and by virtue of the terms of said ordinance, as security, in addition to the
9 property and franchise of said water company, for the payment of the said bonds, and that the same was done with the knowledge, approbation, and consent of the said city of Clay Center, which duly, by its proper officers, in all things ratified and confirmed the same, and the said city of Clay Center, under and by virtue of the provisions of said ordinance and the provisions of said trust deed touching hydrant rental and made in furtherance of the same, paid to your orator, on the tenth day of January, 1886, and on the tenth day of July, 1886, the sum of seventeen hundred dollars on each of said dates respectively, being the amount due under the terms and provisions of said ordinance for hydrant rental during the first year as aforesaid, said payments being made by the said city to the trustee to be applied, as provided in said ordinance, in payment or towards the payment of the interest upon said bonds, and the said sum of thirty-four hundred dollars has been so applied by your orator. A copy of number one of said bonds, with all the coupons attached, is hereto annexed, marked "B," and made a part of this bill the same as if set out *in hæc verba*; and the other fifty-nine of said bonds are the same as the first-mentioned bond except in number. A copy of the trust deed given to secure the said bond is hereto annexed, marked "C," and made a part of this bill and referred to the same as if set out *in hæc verba*; that under the terms of said ordinance and trust deed so as aforesaid made with the consent, knowledge, and approbation of the said city of Clay Center and duly ratified by said city, there became due and payable to the said trustee, in performance of its trust, on the tenth day of January, 1887, eighteen hundred and fifty dollars; that demand was made upon the said city of Clay Center to pay said sum of money, as provided in said trust deed and in said ordinance, to your orator as trustee for the holders of said bonds, and to be applied upon payment of the interest upon the same, and to prevent the forfeiture
10 and foreclosure of the franchise under said trust deed; that the said city of Clay Center neglected and refused to pay the same and still continues to neglect and refuse to pay the same.

That there became due on the tenth day of July, 1887, the further

sum of eighteen hundred and fifty dollars, payable under and by virtue of the terms of said ordinance and of said trust deed made in furtherance and compliance with the provisions of said ordinance, and upon the faith and security of which said bonds were, by said trustee, sold and negotiated; that, though often demanded by said trustee for the said payment to be made to enable it to perform its said trust, the said sum of money has not been paid—not any part thereof—so that there is due and payable from the said city of Clay Center, under and by virtue of the terms of said ordinance and of said trust deed, the sum of thirty-seven hundred dollars, and by reason of such default said trustee is entitled to receive interest upon eighteen hundred and fifty dollars from the tenth day of January, 1887, at seven per cent. per annum, and interest upon eighteen hundred and fifty dollars from the tenth day of July, 1887, at seven per cent. per annum.

That the said city of Clay Center, as its excuse and pretext for the non-payment of said several sums, sometimes pretends that certain of the members of its city government were interested personally in the said contract made by the said John E. Bonebrake, and that the said contract was made corruptly and collusively, to promote the individual interests of the officers of said corporation; but your orator is informed and believes, and therefore charges the fact to be, that at the time of the making of said contract no officer or individual connected with said city government who could or had a right to participate in the passage of said ordinance or to approve the same had any interest whatever in said franchise or in said
11 contract, either present or at that time prospective, and that any interest acquired by any person who was a member of the said city government at that time was acquired long afterwards and for a just consideration, and that the same could not have been influenced or affected, corruptly or otherwise, in their action in the passage of said ordinance or the execution of said contract.

And your orator further charges the fact to be that if any officer knowingly or corruptly was interested in promoting the passage of said ordinance and the entering into said contract that the same was without the knowledge of your orator, and is wholly without the knowledge of the divers individuals and persons who hold said bonds and who took the same in good faith and upon the security given by the provisions of said ordinance, and particularly by the provision relating to water rent as aforesaid and its appropriation by said city directly to the payment of the interest upon said bonds.

Forasmuch, therefore, as your orator is without remedy in a court of law and can have no relief save in a court of equity, wherein matters like the foregoing are properly cognizable and relievable, to the end, therefore, that the said defendant The City of Clay Center and the said defendant The Clay Center Water Company may answer to the premises, but not under oath (answer under oath being expressly waived), your orator prays that the said city of Clay Center may be decreed to have engaged and contracted with your orator to pay directly to your orator, in trust for the benefit of the holders of said

bonds, all or so much of said hydrant rental provided for in said ordinance as may be necessary to pay the interest upon said bonds.

And, further, that the said city of Clay Center may be decreed to pay to your orator the said sum of thirty-seven hundred
12 dollars, now in default and due by the terms of said ordinance and contract for hydrant rental, together with interest on eighteen hundred and fifty dollars of said sum, at seven per cent. per annum, from the tenth day of January, 1887, and interest upon eighteen hundred and fifty dollars of said sum, at the rate of seven per cent. per annum, from July tenth, 1887, and for such other and further relief as may be conformable to equity and good conscience.

And may it please your honors to grant unto your orator the most gracious writ of subpœna, issued out of this honorable court and directed to the marshal, to be served upon the said city of Clay Center and the said Clay Center Water Company, commanding them, at a certain day and under a certain pain, full, true, and perfect answers to make to all and singular the premises, and to further stand to, perform, and abide such other and further orders and directions of this court as may be conformable to equity and good conscience and to this honorable court shall seem meet.

And your orator will ever pray.

THE FARMERS' LOAN & TRUST COMPANY,

[SEAL.] By R. G. ROLSTON, *President.*

TURNER, LEE & McCLURE &
ROSSINGTON, SMITH & DALLAS,
Compl't- Sols.

CHAS. B. SMITH, *Of Counsel.*

13 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Roswell G. Rolston, being duly sworn, says that he is the president of The Farmers' Loan and Trust Company, the complainant in the foregoing bill; that he has read the foregoing bill and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

R. G. ROLSTON.

Sworn to before me this 12th day of July, 1887.

[SEAL.] C. A. SEARLES,
181, *Notary Public, New York County.*

14 EXHIBIT A.

Contract and Ordinance for Water Works for the City of Clay Center, Kansas.

This contract, made and entered into this 24th day of January, A. D. 1884, by and between John E. Bonebrake, of the city of Abilene, in the county of Dickinson, and State of Kansas, party of the

first part, and the City of Clay Center, of Clay county, State of Kansas, a city of the second class, duly organized under the laws of the State of Kansas, party of the second part.

Witnesseth, Whereas, the city council of said city of Clay Center, at a meeting held on the eighth day of January, A. D. 1884, passed and approved an ordinance entitled "An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof;" which said ordinance was published in The Monitor, a newspaper printed in said city of Clay Center, on the nineteenth day of January, A. D. 1884, and is in words and figures as follows, to wit:

"Ordinance No. 64."—(Published January 19th, 1884.)

An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof.

Be it ordained by the mayor and councilmen of the city of Clay Center, Kansas.

SECTION 1. That there is hereby given and granted to John E. Bonebrake, of Abilene, Kansas, his successors and assigns, the exclusive right and privilege for the term of twenty years from date of the adoption of this ordinance of supplying the city of Clay Center, Kansas, and the inhabitants thereof, by a system of water works, with good, clear water suitable for domestic purposes, and for the prevention and extinguishment of fires, and for other purposes subject to the terms and conditions set forth in this ordinance.

SEC. 2. The said John E. Bonebrake, his successors and assigns, is hereby authorized to establish, construct, maintain and operate said works in the city of Clay Center, to receive, take and store, purify, conduct and distribute said water through said city, to construct and extend aqueducts, mains and pipes through all the streets, alleys, lanes and public grounds, and across any stream or bridge in said city, to erect and maintain all engines, machinery and other appliances necessary for the proper conducting of said works, and for supplying said city and the inhabitants thereof with water of the kind, and for the purpose herein mentioned, and for that purpose the said John E. Bonebrake, his successors and assigns, shall have the right to take up all pavements or sidewalks on streets, alleys, lanes or public grounds, and make such excavations therein as may be necessary to lay, repair and maintain aqueducts, mains and pipes below the surface of the ground for conveying and distributing water as aforesaid; provided, that the said John E. Bonebrake, his successors and assigns, shall suitably guard and protect the same so as to prevent injury to persons or property by reason thereof; and, provided further, that such pavement and sidewalk shall be repaired and replaced in as good condition as near as may be, as they were before, and with all convenient speed, and the said John E. Bonebrake, his successors and assigns, shall be liable for all damages occasioned by the removal of any pavement, sidewalk or street

crossing, or making any excavation, whether done by themselves, their lessees, contractors, employés or subcontractors in any degree.

The rights and liabilities provided for in this ordinance shall continue for a period of twenty years, unless sooner terminated as herein provided.

SEC. 3. The mains, the total length of which shall not be less than four miles, shall be four inches in their inner diameter to ten inches in their inner diameter, and located as follows: Commencing on Third street from Dexter street to Crawford street; on Fourth street from Pomeroy street to Dexter street; on Fifth street from Clay street to Webster street; on Sixth street from Lincoln avenue to Court street; on Eighth street from Grant avenue to Lane street; on Clay street from Fourth street to Fifth street; on Grant avenue from Fifth street to Eighth street; on Lincoln avenue from Fourth street to Sixth street; on Court street from Fifth street to Sixth street; on Dexter street from Third street to Eighth street; on Crawford street from Third street to Eighth street; on Lane street from Fifth street to Eighth street.

The water works shall have a sufficient capacity to throw four streams eighty feet high, or maintain its equivalent in pressure from any four of the hydrants hereinafter mentioned; said streams to be thrown through one-inch ring nozzle at the end of fifty feet of two and one-half inch hose. All mains shall be of standard weight and strength water pipe, and be covered by a sufficient depth of earth to prevent freezing, and said water works and every part thereof, shall be of sufficient power and capacity to furnish the water contemplated and provided for in this ordinance, and the said John E. Bonebrake, his successors and assigns, shall operate and keep the same, and every part thereof, in constant repair and working order, and at all times furnish water for all domestic and manufacturing purposes, and, upon an alarm of fire being given, either by day or by night, immediately cause sufficient pressure to throw the streams specified in this ordinance, for any length of time needed for the extinguishing of any fire.

SEC. 4. The said city of Clay Center hereby agree- to rent, and does rent, for the full term of this contract, of the said John E. Bonebrake, his successors and assigns, forty double-nozzle hydrants, to be located on said pipes and mains as the council may by resolution direct, at an annual rental of one hundred dollars each, payable semi-annually on the first days of January and July of each year; provided, however, that the said forty hydrants for the first year after the completion thereof, shall be three thousand four hundred dollars, and for the second year three thousand seven hundred dollars, to be paid semi-ann-ally as aforesaid, but for each and every year after the second year, the annual rental of each of said forty hydrants shall be one hundred dollars, payable as aforesaid without discount, and the said John E. Bonebrake, his successors and assigns, shall extend said mains and pipes at any time when ordered to do so by the mayor and council of said city of Clay Center.

SEC. 5. For all extensions of mains ordered by the council of the said city of Clay Center, the said John E. Bonebrake,

his successors and assigns, shall erect not less than ten double-nozzle fire-hydrants to the mile, and for all such hydrants, until the whole number, including the forty, mentioned in section four of this ordinance shall reach fifty, the said city of Clay Center agrees to pay to the said John E. Bonebrake, his successors and assigns, an annual rental of one hundred dollars each, the same to be paid semi-annually on the first days of January and July of each year.

For all additional hydrants more than fifty, the said city agrees to pay the sum of seventy-five dollars each, until the whole number reaches seventy-five, and for any additional hydrants, more than seventy-five, fifty dollars, payable as above specified.

SEC. 6. In addition to furnishing water at all times from the fire-hydrants, for the prevention and extinguishing of fires free of charge, the said John E. Bonebrake, his successors and assigns, shall furnish water of the kind specified in section one of this ordinance, to the said city of Clay Center and the inhabitants thereof, living or doing business along the mains or pipes, for domestic and manufacturing purposes, and for sprinkling streets and sidewalks, and for washing windows and buildings, and for watering lawns and gardens at not to exceed the following rates, to wit:

Yearly Table Water Rates.

Alcohol for each barrel manufactured		$ 10
Ale cellar, from	40 to	50 00
Bakery, each oven from	40 to	50 00
Barber shop, first chair		5 00
" " each additional chair		3 00
Bath, private, without heating apparatus		3 00
Bath, with heating apparatus		5 00
Bath in boarding or tenement houses		5 00
Bath in public		15 00
Beer, for each barrel brewed		05
Beer-house, from	10 to	50 00
Bill-ard saloon, each table		3 00
Boarding-house, per room		1 00
Boarding-house, but no license less than		10 00
Book bindery		5 00
Brick-work, per thousand		10
Brick yard, for each gang of hands		20 00
Camphene, for each barrel manufactured		10
Candle manufactory, from	100 to	1,000 00
Candy manufactory, from	15 to	75 00
Church, from	5 to	15 00
Church, for baptising, from	5 to	15 00
Cigar manufactory, per hand		1 00
Cigar manufactory, but no license less than		5 00
Club-room, from	50 to	100 00
Coffee saloon, from	5 to	30 00
Confectionery, from	15 to	75 00
Cow		1 00

Distillery, for each barrel distilled		$ 10
Dram shop, from	10 to	75 00
Dyeing and scouring, from	15 to	50 00
Forge		3 00
Fountain, for six months, running not more than fo-r hours per day	10 to	150 00
Hall, from	5 to	30 00
Hat factory, from	30 to	100 00
Horse		2 00
Hose for private stable		5 00
Hose for livery or sale stable, from	20 to	50 00
Hose, for washing pavement, per front foot		10
Hose, for sprinkling streets including sidewalk, per foot run.		25
Hotel, per room		1 00
Ice-cream saloon, from	10 to	50 00
Laboratory, from	20 to	200 00
Laundry, from	10 to	200 00
Lawns and gardens, per 46-foot front		7 00
Livery stable, per stall		2 00
Malting, per bushel		04
Office, from	5 to	30 00
Oyster saloon, from	10 to	30 00
Packing-house, from	40 to	500 00
Photograph gallery, from	10 to	40 00
Plastering, per square yard		½
Porter cellar, from	10 00	50 00
Rectifying whisky, per barrel		03
Residence occupied by one family, 1 to 4 rooms		5 00
Residence occupied by one family, 5 or 6 rooms		6 00
Residence occupied by one family, 7 or 8 rooms		7 00
Residence occupied by one family, 9 or 10 rooms		8 00
Residence occupied by one family, 11 or 12 rooms		9 00
Residence occupied by one family, 13 or 14 rooms		10 00
Residence occupied by one family, 15 or 16 rooms		11 00
Residence occupied by one family, 17 or 18 rooms		12 00
Residence occupied by one family, 19 or 20 rooms		13 00
Residence occupied by one family only with more rooms in the same ratio.		
Restaurant, from	15 to	100 00
Sale stable, per stall		2 00
Shop, from	5 to	30 00
Slaughter-house, from	200 to	500 00
Soap manufactory, from	100 to	1,000 00
Soda manufactory, from	10 to	300 00
Spirit gas, for each barrel manufactured		15
Sprinkling, no license less than		5 00
Sprinkling public grades with hose	25 to	150 00
Sprinkling streets with sprinkling carts, per square		8 00
Sprinkling streets with hose including sidewalk, per foot run.		15

Starch manufactory, from	50 to	$200	00
Steam-boilers, special or meter rates.			
Steam-boilers, no license less than		10	00
Stock yard, from	25 to	500	00
Stone-work, per perch			05
Store, from	5 to	20	00
Sugar refinery, from	300 to	3,000	00
16 Tannery, per vat		6	00
Tannery, but no license less than		25	00
Tenement, per room		1	00
Tenement, but no license less than		5	00
Tobacco manufactory, per hand		1	00
Tobacco manufactory, but no license less than		5	00
Urinal basin, self-closing, from	5 to	10	00
Urinal basin, private		2	00
Vault for residence		5	00
Vault accommodating double house, each		3	00
Vault for tenement or boarding house, every 15 rooms		5	00
Vault bar		5	00
Vehicle		2	00
Vinegar, for each barrel manufactured			05
Washing bottles, from	5 to	30	00
Washing barrels, per barrel			05
Water-closet, private		3	00
Water-closet hotel, per bowel		6	00
Wine cellar, from	10 to	50	00

Meter Rates.

When the quantity averages per day, 1,000 to 2,000 gallons, per 100 gallons	05½
When the quantity averages per day, 2,000 to 3,000 gallons, per 100 gallons	05
When the quantity averages per day, 3,000 to 4,000 gallons, per 100 gallons	04½
When the quantity averages per day, 4,000 to 5,000 gallons, per 100 gallons	04½
When the quantity averages per day, 5,000 to 6,000 gallons, per 100 gallons	04
When the quantity averages per day, 6,000 to 7,000 gallons, per 100 gallons	03½
When the quantity averages per day, 7,000 to 8,000 gallons, per 100 gallons	03¼
When the quantity averages per day, 8,000 to 10,000 gallons, per 100 gallons	03

The said John E. Bonebrake, his successors and assigns, shall whenever the mayor and city council of the said city of Clay Center direct, lay the necessary domestic pipes to supply water and shall supply the same to the inhabitants of the city for domestic purposes, provided there shall be an equivalent of two tenants who shall take water for every one hundred and twenty feet of pipe so ordered to

be laid, and provided further that said city of Clay Center shall not be liable to rent or pay for any hydrant or any pipe ordered to be laid for domestic purposes only, nor shall said city be responsible or liable in any way by reason of anything in this ordinance contained except for the rental of the said five hydrants as herein provided, and the said city shall at all times have the free and unobstructed use of all hydrants for the purpose of preventing and extinguishing fires. The said John E. Bonebrake, his successors and assigns, shall permit any owner or occupant of any building, to erect stand-pipes and connect the same with the main pipe hereafter laid by the order of the council of the said city of Clay Center as provided by this ordinance, and have the use of water through such stand-pipes and connections for the prevention and extinguishment of fires only, free of charge.

And the said city of Clay Center reserves unto itself the right to erect and connect five-hydrants to the mains at any time, laid under the provisions of this ordinance, at the expense of the said city of Clay Center, or any owner of property and use the same for the prevention and extinguishing of fires free of charge; provided, always, that the said city of Clay Center shall pay a rental for at least ten hydrants to every mile of mains and pipes.

And as soon as the works are completed the said John E. Bonebrake, his successors and assigns, shall cause the fire streams, specified in section three, to be produced, in the presence of the city council or committee as the council may appoint, which test shall take place within five days after the completion of said works.

At the first meeting of the council after a full and faithful performance of the test specified in section three, of this ordinance, the city council shall accept the works, and the date of such acceptance shall be the time at which the city shall commence to pay the hydrant rental hereinbefore specified.

SEC. 7. The city shall have the right to use the water free of charge from the hydrants for the purpose of flushing sewers and gutters on all streets, whenever the council shall deem it necessary for sanitary purposes upon giving notice to the person in charge of the water works, provided that there shall not be over two hydrants open at any one time, for such purpose, or for more than two hours at any one time, and that the same shall not be done oftener than twice in any one week. The city shall also have water free of charge for the fire-department building, the city hall, and offices occupied for city purposes only, for all public schools, for one fountain in the city park, the jet of which shall not exceed in volume one-sixteenth of an inch of an orifice and not to run to exceed five hours a day for six months in the year, and for two public drinking fountains, should the city erect the same.

This section shall not be construed as requiring the said John E. Bonebrake, or his assigns to lay any service pipes from the mains for the purposes herein mentioned.

SEC. 8. The said city of Clay Center shall have the right to acquire by purchase and become sole owner of said water works and all the extensions thereof, and the buildings, machinery and prop-

erty of every description, thereunto belonging, at any time after the expiration of ten years from the time of the adoption of this ordinance, upon paying therefor to the owner or owners thereof the value of said property, to be ascertained by appraisement as follows: The said city shall select one appraiser, and the owner of said water works shall select another and the appraisers selected shall select a third, or if they cannot agree upon a third person, a third appraiser shall be selected by the judge of the district court of Clay county in the State of Kansas, and the three persons so determined upon shall appraise the said property at its then cash value, which appraisement shall be binding upon both parties, as to the value thereof, and the said city of Clay Center shall have the right to purchase and become the absolute owner of such property at such appraised value, provided, if there shall at such time be any mortgage on such property, then the amount of such mortgage shall be deducted from the amount of such apprais-ment, and only the difference paid to the owner of such works and property.

And in case the said city of Clay Center does not purchase and become the owner of said water works and property as aforesaid, at the end of twenty years, then all rights and privileges in this ordinance granted to the said John E. Bonebrake, his successors and assigns, shall be extended for another period of twenty years and renewed every twenty years thereafter, subject to the right of said city to purchase the same as aforesaid at any time thereafter, and subject to the same duties, liabilities, obligations and penalties as herein provided for.

SEC. 9. It is hereby agreed by and between the said John E. Bonebrake, his successors and assigns, and the city of Clay Center, that in the event it be deemed necessary in the contraction or extension of said water works to issue first-mortgage bonds upon the said water works, property or extensions, either or all, that so much of the hydrant rental to be paid by the city of Clay Center under the provisions of this ordinance as will fully pay the interest on said bonds shall be paid the holders of such bonds by their trustees semi-annually on the first days of January and July of each year, until said bonds are paid, and that the balance of the hydrant rental which the city of Clay Center agrees to pay, shall be paid to John E. Bonebrake, his successors or assigns.

It being understood that the hydrant rental which the city of Clay Center agrees to pay to the said John E. Bonebrake, his successors and assigns, for fire protection, or so much of said amount as shall be necessary to pay the interest on such bonds, shall be set aside and paid to the trustee of such bonds, and by him used exclusively and only for the payment of interest upon said bonds when and so long as the same shall become due and payable.

When such bonds are fully paid and concelled, then the hydrant rental due from the city shall be paid in full to John E. Bonebrake, his successors and assigns.

But in no event shall the city of Clay Center pay to said trustee for such interest, a sum greater than the amount agreed to be paid John E. Bonebrake, his successors and assigns.

And, provided further, that the said city shall in no case become liable for the misappropriation of any money paid to said trustee. If there be no such trustee such payments may be made to the owners of said bonds.

17 SEC. 10. The said John E. Bonebrake, his successors and assigns, shall construct said water works and complete the same as herein provided on or before the first day of November, A. D. 1884, and shall execute with the city of Clay Center, a contract in writing for the faithful performance on the part of the said John E. Bonebrake, his successors and assigns, of the agreements and covenants hereof, and the duties, liabilities and obligations imposed upon the said John E. Bonebrake, his successors and assigns, by this ordinance and compliance with the orders and directions of the mayor and council, as provided herein, which contract shall be executed within five days from the date of publication of this ordinance, and signed by the mayor on the part of the city of Clay Center, and attested by the clerk with the seal of said city.

SEC. 11. In case of any neglect or failure on the part of the said John E. Bonebrake, his assigns and successors to operate the said water works so as to furnish adequate protection against fire or for domestic consumption, as provided for in this ordinance, the mayor and council of the city of Clay Center, shall take possession of the said water works and take full charge of the business of operating the same, and shall account to the said John E. Bonebrake, his successors and assigns therefor, and perform and conduct the same in all respects as required by and of the said John E. Bonebrake, his successors and assigns, and the said business shall be carried on at the sole and proper expense of the said John E. Bonebrake, and the said machinery and works shall, while so operated by the city of Clay Center, be kept and maintained in good order and condition.

If the said John E. Bonebrake, his successors and assigns, shall offer to operate the said works at any time within one year from the date of the taking possession of said works by said city the possession of said works and business shall be turned over to the said John E. Bonebrake, his successors and assigns.

If no such offer is made by the said John E. Bonebrake, his successors and assigns within one year from the date aforesaid, the franchises and privileges of said water works may be forfeited and annulled by an ordinance of the said city of Clay Center.

Provided, that the provisions of this section shall not apply to any failure on the part of the said John E. Bonebrake, his successors and assigns, arising from or caused by unavoidable accident.

SEC. 12. Any person or persons who shall carelessly, willfully or maliciously injure any portion of the works, fixtures or other property pertaining to said water works, or shall wrongfully interfere with or open any hydrant, or waste any water therefrom, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed one hundred dollars and costs of prosecution.

And the said city of Clay Center agrees to pass and enforce such

ordinance as may be necessary to protect the said John E. Bonebrake and his assigns, in his property and rights, from the acts of evil-disposed persons during the continuance of this franchise; and the said city of Clay Center hereby expressly agree-, as a part of this franchise and contract that it will, upon the request in writing of the said John E. Bonebrake, or his assigns, proceed without delay to exercise its rights of eminent domain, under the statutes of the State of Kansas, in the matter of the condemnation of any lot, parcel or piece of ground, or of water or any water privilege, that may be necessary to the proper and convenient construction, maintainance and operation of the system of water works, in this ordinance contemplated and provided for.

Provided, that the said John E. Bonebrake and his assigns shall pay all costs and expense incident to such condemnation proceedings, including the cost of all property so condemned, and provided further, that the right to the free and exclusive use of all property so condemned, shall rest and remain in the said John E. Bonebrake and his assigns, so long as the franchise and contract for such water works shall remain in force and effect.

SEC. 13. This ordinance shall take effect and be in force from and after its publication once in the Monitor.

Passed the council January 8th, 1884.

Approved January 9th, 1884.

C. E. GIFFORD, *Mayor.*

Attest. A. A. GODARD, *City Clerk.*

Published January 19th, 1884.

Now, therefore, these presents witness, that the said party of the first part for and in consideration of the passing and approving of the said ordinance by the said city council, as aforesaid, and the franchises, rights and privileges thereby granted, hereby covenants and agrees to, and with the said party of the second part, for himself and his successors and assigns that he will faithfully keep and abide by the provisions of said ordinance and will faithfully perform all tests named in said ordinance and will fulfill and carry out all the duties and obligations by him in said ordinance provided to be done and performed.

And in consideration aforesaid, the said party of the first part further covenants and agrees that the said party of the second part shall have the right to purchase the said water works as specified in said ordinance and shall take possession of said water works in the emergency mentioned therein and under the condition therein specified and that he will peaceably and quietly turn over and deliver possession of said works, with all books, papers and other property necessary for the full and proper conduct of the business of the said party of the first part; and further agree- that the said party of the second part shall and may have all the rights, benefits and privileges stipulated for and mentioned in the ordinance aforesaid; and the said party of the second part on its behalf and part, and in consideration of the advantages to the inhabitants and benefits to the

property-owners of said city of Clay Center, by reason of the building of said water works, and the benefits guaranteed to said city by the said ordinance, hereby covenants and agrees to and with the said party of the first part, his successors and assigns, that it will faithfully keep and abide by the provisions of said ordinance, and shall and will faithfully discharge, perform and fulfill and carry out the matters and things of every kind whatsoever, by it in said ordinance provided to be done and performed. It is further agreed and understood that in the event of a fire and the usual water supply fails to meet the requirements, that the party of the first part shall have the privilege of laying an influent, or suction pipe, to the river or creek and that when the water from such river or creek is in the pipes and mains, it shall not be considered any violation of section one (1) of said ordinance. Provided such river or creek water shall not be permitted to remain in the mains and pipes for more than two hours after the extinguishment of any fire.

In witness whereof the said party of the first part has hereunto set his hand and seal. And the said party of the second part by a vote of the city council has caused these presents to be signed by its mayor and attested by its clerk, and has further caused the seal of said city of Clay Center to be hereunto affixed the day and year first above written.

18 EXHIBIT B.

UNITED STATES OF AMERICA.

$1000. *First-Mortgage Bond.* $1000.

The Clay Center Water Company, Clay Center, Kans.

No. 1.

The Clay Center Water Company, a corporation duly organized and incorporated under the laws of the State of Kansas, hereby promises to pay to the bearer hereof on the tenth day of January A. D. 1905, at the office of the Farmers' Loan and Trust Company in the city of New York, the sum of one thousand dollars for value received together with interest thereon from the date hereof at the rate of seven per cent. per annum, payable semi-annually on the tenth days of January and July, in each and every year at the office of the aforesaid, upon the presentation and surrender of annexed coupons for interest as they severally become due and payable. And in case of non-payment of any half-yearly installment of interest or any part thereof after the same shall have become due and payable and after demand made at said place of payment and in case such default shall continue for ninety days after such demand, then the principal of this bond shall become due and payable as though the whole period of twenty years had elapsed.

At the expiration of ten years from this date, the Clay Center Water Company, guarantees to set apart annually a sum sufficient from its assets and earnings to create a sinking fund for the final

redemption of these bonds at maturity, said sinking fund to be invested in this issue of bonds or if such bonds cannot be purchased on satisfactory terms then said sinking fund to be invested in other reliable securities.

19 This bond is one of a series of like tenor and date, numberes from one to sixty inclusive, amounting in the aggregate to sixty thousand dollars, the whole issue being secured by a first mortgage or deed of trust to the Farmers' Loan and Trust Company of the City of New York, as (trustee), on all the property, mains, pipes, connections, hydrants, buildings, real estate, franchise and rights of way in the city of Clay Center, which said deed is duly recorded in the office of the register of deeds in and for Clay county, State of Kansas.

This series of bonds and the mortgage or deed of trust given to secure their payment were executed in pursuance of an order made by the stockholders of the Clay Center Water Company, at a meeting of said stockholders held on the 11th day of December A. D. 1884.

In witness whereof, the Clay Center Water Company of Clay Center Kansas, have caused this bond to be signed by its president and attested by its secretary and the interest coupons hereto [SEAL.] attached to be signed by its president and its corporate seal to be hereto affixed at its office in the city of Clay Center, on this tenth day of January A. D. 1885.

THE CLAY CENTER WATER COMPANY.
J. E. BONEBRAKE, *President.*

Attest: D. A. VALENTINE, *Secretary.*

No. —. STATE OF KANSAS. $1000.

The Clay Center Water Company First-Mortgage Bonds.

$1000. Dated JANY. 10, 1885.

Interest at 7 per centum per annum, payable July 10th & Jany. 10th. Principal due Jan. 10th 1905.

Trustee's Certificate.

The Farmers' Loan and Trust Company of the City of New York hereby certifies that this bond is one of the sixty bonds described in and referred to in the within-mentioned mortgage.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee,*
By —— ——, *Vice-President.*

20 *Interest Coupon.*

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1889, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

8

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1887, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

4

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1888, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

7

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1886, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

3

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1888, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

6

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1886, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

2

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1887, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

5

Interest Coupon.

The Clay Center Water Co , of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1885, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

1

[Written across the face of coupons numbered 1, 2, and 3:] These three paid & detached.

21 *Interest Coupon.*

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1893, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

16

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1892, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

15

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1892, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

14

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1891, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

13

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1891, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

12

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1890, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

11

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1890, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

10

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1889, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

9

22 *Interest Coupon.*

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1897, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

24

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1896, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

23

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1896, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

22

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1895, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

21

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1895, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

20

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1894, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

19

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1894, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

18

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1893, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

17

23 *Interest Coupon.*

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1901, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

32

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1900, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

31

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1900, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

30

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1899, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

29

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1899, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

28

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1898, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

27

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1898, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

26

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1897, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

25

24 *Interest Coupon.*

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1905, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

40

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1904, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

39

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1904, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

38

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1903, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

37

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1903, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

36

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1902, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

35

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of Jan'y, 1902, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

34

Interest Coupon.

The Clay Center Water Co., of Clay Center, Kas.,

will pay to bearer thirty-five dollars, at the office of the Farmers' Loan and Trust Co., in the city of New York, on the tenth day of July, 1901, for semi-annual interest on its first-mortgage bond.

J. E. BONEBRAKE, *President.*

33

25 EXHIBIT C.

This indenture, made this 10th day of January, A. D. 1885, between the Clay Center Water Company, a corporation duly organized and incorporated under the laws of the State of Kansas and doing business in the city of Clay Center, county of Clay, in said State, party of the first part, and the Farmers' Loan and Trust Company of the City of New York, as trustee, party of the second part, witnesseth:

That whereas on the 8th day of January, A. D. 1884, the city of Clay Center, by its mayor and councilmen, duly passed, and whereas the mayor of said city of Clay Center on the 9th day of January, A. D. 1884, duly approved, the ordinance hereinafter set forth, granting to John E. Bonebrake, his successors and assigns, certain franchises and privileges; and whereas on the 24th day of January, A. D. 1884, the city of Clay Center and the said John E. Bonebrake made and entered into the following agreement, to wit:

Contract and Ordinance for Water Works for the City of Clay Center, Kansas.

26 This contract, made and entered into this 24th day of January, A. D. 1884, by and between John E. Bonebrake, of the city of ——, in the county of Dickinson and State of Kansas, party of the first part, and the City of Clay Center, of Clay county, State of Kansas, a city of the second class duly organized under the laws of the State of Kansas, party of the second part, witnesseth:

Whereas the city council of said city of Clay Center, at a meeting held on the eighth day of January, A. D. 1884, passed and approved an ordinance entitled "An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof," which said ordinance was published in The Monitor, a newspaper printed in said city of Clay Center, on the nineteenth day of January, A. D. 1884, and is in words and figures as follows, to wit:

"*Ordinance No.* 64." (*Published January* 19*th*, 1884.)

An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof.

Be it ordained by the mayor and councilmen of the city of Clay Center, Kansas:

27 SECTION I. That there is hereby given and granted to John E. Bonebrake, of Abilene, Kansas, his successors and assigns, the exclusive right and privilege for the term of twenty years from date of the adoption of this ordinance of supplying the city of Clay Center, Kansas and the inhabitants thereof, by a system of water works, with good, clear water suitable for domestic purposes, and for

the prevention and extinguishment of fires, and for other purposes subject to the terms and conditions set forth in this ordinance.

SECTION II. The said John E. Bonebrake, his successors and assigns, is hereby authorized to establish, construct, maintain and operate said works in the city of Clay Center, to receive take and store, purify, conduct and distribute said water through said city, to construct and extend aqueducts, mains and pipes through all the streets, alleys, lanes and public grounds, and across any stream or bridge in said city, to erect and maintain all engines, machinery and other appliances, necessary for the proper conducting of said works, and for supplying said city and the inhabitants thereof with water of the kind, and for the purpose herein mentioned, and for that purpose the said John E. Bonebrake, his successors and assigns, shall have the right to take up all pavements or sidewalks on streets, alleys, lanes or public grounds, and make such excavations therein as may be necessary to lay, repair and maintain aqueducts,
28 mains and pipes below the surface of the ground for conveying and distributing water as aforesaid; provided, that the said John E. Bonebrake, his successors and assigns, shall suitably guard and protect the same so as to prevent injury to persons or property by reason thereof; and provided, further, that such pavement and sidewalk shall be repaired and replaced in as good condition as near as may be, as they were before and with all convenient speed, and the said John E. Bonebrake, his successors and assigns, shall be liable for all damages occasioned by the removal of any pavement, sidewalk or street crossing, or making any excavation, whether done by themselves, their lessees, contractors, employees or subcontractors in any degree.

The rights and liabilities provided for in this ordinance shall continue for a period of twenty years, unless sooner terminated as herein provided.

SECTION III. The mains, the total length of which shall not be less than four miles, shall be four inches in their inner diameter to ten inches in their inner diameter, and located as follows: Commencing on Third street, from Dexter street to Crawford street, on Fourth street from Pomeroy street to Dexter street, on Fifth street from Clay street to Webster street, on Sixth street from Lincoln avenue to Court street, on Eighth street, from Grant avenue to Lane street, on Clay street from Fourth street to Fifth street, on Grant avenue from Fifth street to Eighth street, on Lincoln avenue
29 from Fourth street to Sixth street, on Court street from Fifth street to Sixth street, on Dexter street from Third street to Eighth street, on Crawford street from Third street to Eighth street, on Lane street from Fifth street to Eighth street.

The water works shall have a sufficient capacity to throw four streams eighty feet high, or maintain its equivalent in pressure from any four of the hydrants hereinafter mentioned; said streams to be thrown through one-inch ring nozzle at the end of fifty feet of two and one-half inch hose. All mains shall be of standard weight and strength water pipe, and be covered by a sufficient depth of earth to prevent freezing, and said water works and every part thereof,

shall be of sufficient power and capacity to furnish the water contemplated and provided for in this ordinance, and, the said John E. Bonebrake, his successors and assigns, shall operate and keep the same, and every part thereof, in constant repair and working order, and at all times furnish water for all domestic and manufacturing purposes, and, upon an alarm of fire being given, either by day or by night, immediately cause sufficient pressure to throw the streams specified in this ordinance, for any length of time needed for the extinguishing of any fire.

SECTION IV. The said city of Clay Center hereby agree to rent, and does rent, for the full term of this contract, of the said John E. Bonebrake, his successors and assigns, forty double-nozzle
30 hydrants, to be located on said pipes and mains as the council may by resolution direct, at an annual rental of one hundred dollars each, payable semi-annually on the first days of January and July of each year; provided, however, that the said forty hydrants for the first year after the completion thereof, shall be three thousand four hundred dollars, and for the second year three thousand seven hundred dollars, to be paid semi-annually as aforesaid, but for each and every year after the second year, the annual rental of each of said forty hydrants shall be one hundred dollars, payable as aforesaid without discount, and the said John E. Bonebrake his successors and assigns, shall extend said mains and pipes at any time when ordered to do so by the mayor and council of said city of Clay Center.

SECTION V. For all extensions of mains ordered by the council of the said city of Clay Center, the said John E. Bonebrake his successors and assigns, shall erect not less than ten double-nozzle fire-hydrants to the mile, and for all such hydrants, until the whole number, including the forty, mentioned in section four of this ordinance shall reach fifty, the said city of Clay Center agrees to pay to the said John E. Bonebrake, his successors and assigns, an annual rental of one hundred dollars each, the same to be paid semi-annually on the first days of January and July of each year.

For all additional hydrants more than fifty, the said city agrees to pay the sum of seventy-five dollars each, until the whole
31 number reaches seventy-five and for any additional hydrants, more than seventy-five, fifty dollars, payable as above specified.

SECTION VI. In addition to furnishing water at all times from the fire-hydrants, for the prevention and extinguishing of fires free of charge the said John E. Bonebrake, his successors and assigns, shall furnish water of the kind specified in section one of this ordinance, to the said city of Clay Center and the inhabitants thereof, living or doing business along the mains or pipes, for domestic and manufacturing purposes, and for sprinkling streets and sidewalks, and for washing windows and buildings, and for watering lawns and gardens at not to exceed the following rates, to wit:—

Yearly Table Water Rates.

	Alcohol for each barrel manufactured		$ 10
	Ale cellar, from	40 to	50 00
	Bakery, each oven from	40 to	50 00
	Barber shop, first chair		5 00
	" " each additional chair		3 00
	Bath, private, without heating apparatus		3 00
	Bath, with heating apparatus		5 00
	Bath in boarding or tenement houses		5 00
	Bath in public		15 00
	Beer, for each barrel brewed		05
	Beer-house, from	10 to	50 00
	Billiard saloon, each table		3 00
32	Boarding-house, per room		1 00
	Boarding-house, but no license less than		10 00
	Bookbindery		5 00
	Brick-work, per thousand		10
	Brick yard, for each gang of hands		20 00
	Camphene, for each barrel manufactured		10
	Candle manufactory, from	100 to	1,000 00
	Candy manufactory, from	15 to	75 00
	Church, from	5 to	15 00
	Church, for baptising, from	5 to	15 00
	Cigar manufactory, per hand		1 00
	Cigar manufactory, but no license less than		5 00
	Club-room, from	50 to	100 00
	Coffee saloon, from	5 to	30 00
	Confectionery, from	15 to	75 00
	Cow		1 00
	Distillery, for each barrel distilled		10
	Dram shops, from	10 to	75 00
	Dyeing and scouring, from	15 to	50 00
	Forge		3 00
	Fountain, for six months, running not more than four hours per day	10 to	150 00
	Hall, from	5 to	30 00
	Hat factory, from	30 to	100 00
	Horse		2 00
	Hose for private stable		5 00
	Hose for livery or sale stable, from	20 to	50 00
	Hose, for washing pavement, per front foot		10
33	Hose, for sprinkling streets including sidewalk, per foot run.		25
	Hotel, per room		1 00
	Ice-cream saloon, from	10 to	50 00
	Laboratory, from	20 to	200 00
	Laundry, from	10 to	200 00
	Lawns and gardens, per 46-foot front		7 00
	Livery stable, per stall		2 00
	Malting, per bushel		04

Office, from		5 to	$30 00
Oyster saloon, from		10 to	30 00
Packing-house, from		40 to	500 00
Photograph gallery, from		10 to	40 00
Plastering, per square yard			½
Porter cellar, from		10 00	50 00
Rectifying whisky, per barrel			03
Residence occupied by one family, 1 to 4 rooms			5 00
Residence occupied by one family, 5 or 6 rooms			6 00
Residence occupied by one family, 7 or 8 rooms			7 00
Residence occupied by one family, 9 or 10 rooms			8 00
Residence occupied by one family, 11 or 12 rooms			9 00
Residence occupied by one family, 13 or 14 rooms			10 00
34 Residence occupied by one family, 15 or 16 rooms			11 00
Residence occupied by one family, 17 or 18 rooms			12 00
Residence occupied by one family, 19 or 20 rooms			13 00
Residence occupied by one family only with more rooms in the same ratio.			
Restaurant, from		15 to	100 00
Sale stable, per stall			2 00
Shop, from		5 to	30 00
Slaughter-house, from		200 to	500 00
Soap manufactory, from		100 to	1,000 00
Soda manufactory, from		10 to	300 00
Spirit gas, for each barrel manufactured			15
Sprinkling, no license less than			5 00
Sprinkling public grades with hose		25 to	150 00
Sprinkling streets with sprinkling carts, per square			8 00
Sprinkling streets with hose, including sidewalk, per foot run			15
Starch manufactory, from		50 to	200 00
Steam-boilers, special or meter rates.			
Steam-boilers, no license less than			10 00
Stock yard, from		25 to	500 00
Stone-work, per perch			05
Stove, from		5 to	20 00
Sugar refinery, from		300 to	3,000 00
35 Tannery, per vat			6 00
Tannery, but no license less than			25 00
Tenement, per room			1 00
Tenement, but no license less than			5 00
Tobacco manufactory, per hand			1 00
Tobacco manufactory, but no license less than			5 00
Urinal basin, self-closing, from		5 to	10 00
Urinal basin, private			2 00
Vault for residence			5 00
Vault accommodating double house, each			3 00
Vault for tenement or boarding house, every 15 rooms			5 00
Vault bar			5 00
Vehicle			2 00
Vinegar, for each barrel manufactured			05

Washing bottles, from	5 to	$30 00
Washing barrels, per barrel		05
Water-closet, private		3 00
Water-closet hotel, per bowl		6 00
Wine cellar, from	10 to	50 00

Meter Rates.

When the quantity averages per day, 1,000 to 2,000 gallons, per 100 gallons	06½
When the quantity averages per day, 2,000 to 3,000 gallons, per 100 gallons	05
36 When the quantity averages per day, 3,000 to 4,000 gallons, per 100 gallons	04½
When the quantity averages per day, 4,000 to 5,000 gallons, per 100 gallons	04½
When the quantity averages per day, 5,000 to 6,000 gallons, per 100 gallons	04
When the quantity averages per day, 6,000 to 7,000 gallons, per 100 gallons	03½
When the quantity averages per day, 7,000 to 8,000 gallons, per 100 gallons	03½
When the quantity averages per day, 8,000 to 10,000 gallons, per 100 gallons	03

The said John E. Bonebrake, his successors and assigns, shall whenever the mayor and city council of the said city of Clay Center direct, lay the necessary domestic pipes to supply water and shall supply the same to the inhabitants of the city for domestic purposes, provided there shall be an equivalent of two tenants who shall take water for every one hundred and twenty feet of pipe so ordered to be laid, and provided further that said city of Clay Center shall not be liable to rent or pay for any hydrant or any pipe ordered to be laid for domestic purposes only, nor shall said city be responsible or liable in any way by reason of anything in this ordinance contained except for the rental of the said five hydrants as herein provided, and the said city shall at all times have the free and
37 unobstructed use of all hydrants for the purpose of preventing and extinguishing fires. The said John E. Bonebrake, his successors and assigns, shall permit any owner or occupant of any building, to erect stand-pipes and connect the same with the main pipes hereafter laid by the order of the council of the said city of Clay Center as provided by this ordinance, and have the use of water through such stand-pipes and connections for the prevention and extinguishment of fires only, free of charge.

And the said city of Clay Center reserves unto itself the right to erect and connect five hydrants to the mains at any time, laid under the provisions of this ordinance, at the expense of the said city of Clay Center, or any owner of property and use the same for the prevention and extinguishment of fires free of charge; provided, always, that the said city of Clay Center shall pay a rental for at least ten hydrants to every mile of mains and pipes.

And as soon as the works are completed the said John E. Bonebrake, his successors and assigns shall cause the fire streams, specified in section three, to be produced, in the presence of the city council or committee as the council may appoint, which test shall take place within five days after the completion of said works.

At the first meeting of the council after a full and faithful performance of the test specified in section three, of this ordinance, the city council shall accept the works, and the date of such ac-
38 ceptance shall be the time at which the city shall commence to pay the hydrant rental hereinbefore specified.

SECTION VII. The city shall have the right to use the water free of charge from the hydrants for the purpose of flushing sewers and gutters on all streets, whenever the council shall deem it necessary for sanitary purposes upon giving notice to the person in charge of the water works, provided that there shall not be over two hydrants open at any one time, for such purpose, or for more than two hours, at any one time, and that the same shall not be done oftener than twice in any one week. The city shall also have water free of charge for the fire department building, the city hall and offices occupied for city purposes only, for all public schools, for one fountain in the city park, the jet of which shall not exceed in volume one-sixteenth of an inch of an orifice and not to run to exceed five hours a day for six months in the year, and for two public drinking fountains, should the city erect the same.

This section shall not be construed as requiring the said John E. Bonebrake, or his assigns to lay any service pipes from the mains for the purposes herein mentioned.

SECTION VIII. The said city of Clay Center shall have the right to acquire by purchase and become sole owner of said water works and all the extensions thereof, and the buildings, machinery and property of every description, thereunto belonging, at any time after the expiration of ten years from the time of the adoption of
39 this ordinance, upon paying therefor to the owner or owners thereof the value of said property, to be ascertained by appraisement as follows: The said city shall select one appraiser, and the owner of said water works shall select another and the appraisers selected shall select a third, or if they cannot agree upon a third person a third appraiser shall be selected by the judge of the district court of Clay county in the State of Kansas, and the three persons so determined upon shall appraise the said property at its then cash value, which appraisement shall be binding upon both parties, as to the value thereof, and the said city of Clay Center, shall have the right to purchase and become the absolute owner of such property at such appraised value, provided, if there shall at such time be any mortgage on such property, then the amount of such mortgage shall be deducted from the amount of such appraisement and only the difference paid to the owner of such works and property.

And in case the said city of Clay Center, does not purchase and become the owner of said water works and property as aforesaid, at the end of twenty years, then all rights and privileges in the ordinance granted to the said John E. Bonebrake, his successors and

assigns shall be extended for another period of twenty years and renewed every twenty years thereafter, subject to the right of said city to purchase the same as aforesaid at any time thereafter, and subject to the same duties, liabilities, obligations and penalties as herein provided for.

40 SECTION IX. It is hereby agreed by and between the said John E. Bonebrake, his successors and assigns, and the city of Clay Center, that in the event it be deemed necessary in the construction or extension of said water works to issue first-mortgage bonds upon the said water works, property or extensions, either or all, that so much of the hydrant rental to be paid by the city of Clay Center under the provisions of this ordinance as will fully pay the interest on said bonds shall be paid the holders of such bonds by their trustees semi-annually on the first days of January and July of each year, until said bonds are paid, and that the balance of the hydrant rental which the city of Clay Center agrees to pay shall be paid to John E. Bonebrake, his successors or assigns.

It being understood that the hydrant rental which the city of Clay Center agrees to pay to the said John E. Bonebrake, his successors and assigns, for fire protection, or so much of said amount as shall be necessary to pay the interest on such bonds, shall be set aside and paid to the trustee of such bonds, and by him used exclusively and only for the payment of interest upon said bonds when and so long as the same shall become due and payable.

When such bonds are fully paid and cancelled, then the hydrant rental due from the city shall be paid in full to John E. Bonebrake, his successors and assigns.

But in no event shall the City of Clay Center pay to said trustee for such interest, a sum greater than the amount agreed to

41 be paid John E. Bonebrake, his successors and assigns.

And, provided further, that the said city shall in no case become liable, for the misappropriation of any money paid to said trustee. If there be no such trustee such payments may be made to the owners of said bonds.

SECTION X. The said John E. Bonebrake, his successors and assigns, shall construct said water works and complete the same as herein provided on or before the first day of November, A. D. 1884, and shall execute with the city of Clay Center, a contract in writing for the faithful performance on the part of the said John E. Bonebrake, his successors and assigns, of the agreements and covenants hereof, and the duties, liabilities and obligations imposed upon the said John E. Bonebrake, his successors and assigns by this ordinance and compliance with the orders and directions of the mayor and council, as provided herein, which contract shall be executed within five days from the date of the publication of this ordinance, and signed by the mayor on the part of the city of Clay Center, and attested by the clerk, with the seal of said city.

SECTION XI. In case of any neglect or failure on the part of the said John E. Bonebrake, his assigns and successors, to operate the said water works, so as to furnish adequate protection against fire and

for domestic consumption, as provided for in this ordinance,
42 the mayor and council of the city of Clay Center, shall take possession of the said water works and take full charge of the business of operating the same, and shall account to the said John E. Bonebrake, his successors and assigns therefor, and perform and conduct the same in all respects, as required by and of the said John E. Bonebrake, his successors and assigns, and the said business shall be carried on at the sole and proper expense of the said John E. Bonebrake, and the said machinery and works shall, while so operated by the city of Clay Center, be kept and maintained in good order and condition. If the said John E. Bonebrake, his successors and assigns, shall offer to operate the said works at any time within one year from the date of the taking possession of said work by said city the possession of said works and business, shall be turned over to the said John E. Bonebrake, his successors and assigns.

If no such offer is made by the said John E. Bonebrake, his successors and assigns within one year from the date aforesaid the franchises and privileges of said water works may be forfeited and annulled by an ordinance of the said city of Clay Center.

Provided, that the provisions of this section shall not apply to any failure on the part of the said John E. Bonebrake, his successors and assigns, arising from or caused by unavoidable accident.

SECTION XII. Any person or persons, who shall carelessly, wilfully or maliciously, injure any portion of the works, fixture-
43 or other property pertaining to said water works, or shall wrongfully interfere with or open any hydrant, or waste any water therefrom, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed $100 and costs of prosecution.

And the said city of Clay Center agrees to pass and enforce such ordinance as may be necessary to protect the said John E. Bonebrake and his assigns, in his property and rights, from the acts of evil-disposed persons, during the continuance of this franchise; and the said city of Clay Center hereby expressly agree-, as a part of this franchise and contract that it will, upon the request in writing of the said John E. Bonebrake, or his assigns, proceed without delay to examine its rights of eminent domain, under the statutes of the State of Kansas, in the matter of the condemnation of any lot, parcel or piece of ground, or of water or any water privilege, that may be necessary to the proper and convenient construction, maintainance and operation, of the system of water works in this ordinance, contemplated and provided for.

Provided, that the said John E. Bonebrake and his assigns shall pay all costs and expense incident to such condemnation proceedings including the cost of all property so condemned, and provided further, that the right to the free and exclusive use of all property so condemned, shall rest and remain in the said John E. Bonebrake and his assigns, so long as the franchise and contract for such water works shall remain in force and effect.

44 SECTION XIII. This ordinance shall take effect and be in force from and after its publication once in the "Monitor."

Passed the council January 8, 1884. Approved January 9, 1884.
C. E. GIFFORD, *Mayor.*

Attest: A. A. GODDARD, *City Clerk.*

Published January 19th, 1884.

Now, therefore, these presents witness: That the said party of the first part, for and in consideration of the passing and approving of the said ordinance by the city council as aforesaid and the franchises, rights, and privileges thereby granted, hereby covenants and agrees to and with the said party of the second part, for himself and his successors and assigns, that he will faithfully keep and abide by the provisions of said ordinance and will faithfully perform all tests named in said ordinance and will fulfill and carry out all the duties and obligations by him in said ordinance provided to be done and performed.

And, in consideration aforesaid, the said party of the first part further covenants and agrees that the said party of the second part shall have the right to purchase the said water works as specified in said ordinance and shall take possession of said water works in the emergency mentioned therein and under the condition
45 therein specified, and that he will peaceably and quietly turn over and deliver possession of said works, with all books, papers, and other property necessary for the full and proper conduct of the business of the said party of the first part; and further agree- that the said party of the second part shall and may have all the rights, benefits, and privileges stipulated for and mentioned in the ordinance aforesaid; and the said party of the second part, on its behalf and part and in consideration of the advantages to the inhabitants and benefits to the property-owners of said city of Clay Center by reason of the building of said water works and the benefits guaranteed to said city by the said ordinance, hereby covenants and agrees to and with the said party of the first part, his successors and assigns, that it will faithfully keep and abide by the provisions of the said ordinance and shall and will faithfully discharge, perform, and fulfill and carry out the matters and things of every kind whatsoever by it in said ordinance provided to be done and performed.

It is further agreed and understood that in the event of a fire and the usual water supply fails to meet the requirements that the party of the first part shall have the privilege of laying an influent or suction pipe to the river or creek, and that when the water from such river or creek is in the pipes or mains it shall not be considered any violation of section (1) one of said ordinance; provided such river or creek water shall not be permitted to remain in
46 the mains and pipes for more than two hours after the extinguishment of any fire.

In witness whereof the said party of the first part has hereunto set his hand and seal, and the said party of the second part, by a vote of the city council, has caused these presents to be signed by its mayor and attested by its clerk, and has further caused the seal

of said city of Clay Center to be hereunto affixed the day and year first above written.

This contract to be executed and delivered in triplicate.

JOHN E. BONEBRAKE. [SEAL.]
C. E. GIFFORD, *Mayor.*

Attest:
[SEAL.] A. A. GODDARD, *City Clerk.*

And whereas thereafter, on the 8th day of December, 1884, the said John E. Bonebrake endorsed on the back of said contract in writing the words and figures as follows, to wit:

CLAY CENTER, KANSAS, *Dec.* 8, 1884.

"For value received I hereby sell, assign, and transfer unto the Clay Center Water Company all my interest in the within contract and all my right, privileges, and franchises under said contract and the ordinance of the said city of Clay Center, Kansas, relating thereto.

JOHN E. BONEBRAKE."

47 And delivered the same to the said Clay Center Water Company, and thereby sold, assigned, and transferred all the right, privileges, benefits, and franchises conferred upon the said John E. Bonebrake by said contract and the ordinance of said city unto the said party of the first part;

And whereas at a meeting of the stockholders of the said Clay Center Water Company, held at its office, in the city of Clay Center, on the 11th day of December, A. D. 1884, there being a quorum of said stockholders present, a resolution, of which the following is a copy, was unanimously adopted, to wit:

Resolved, That for the purpose of aiding in the construction and building of water works and the purchase of suitable grounds that John E. Bonebrake, of the Clay Center Water Company, be, and is hereby, authorized to cause to be executed a trust deed upon all of the property and franchises of the said Clay Center Water Company, including all ground, buildings, mains, pipes, and property of whatsoever kind owned by said company, or that may hereafter be acquired by said company, including all extensions ordered by the city of Clay Center, or that may be made by said company, as security for the sum of ($60,000) sixty thousand dollars, running twenty years at the rate of seven per cent. per annum, payable semi-annually, on the 10th days of January and July of each

48 year, and for the further security of said bonds that the said John E. Bonebrake be authorized to pledge in said trust deed, for the payment of interest on same, all hydrants rentals — may become due from the city of Clay Center, and that he be further authorized to negotiate said bonds;

And whereas the party of the first part, by and through John E. Bonebrake, its president (and attested by its secretary), as authorized and directed by the above-recited order, did, on the 10th day of January, A. D. 1885, make, execute, and issue the bonds of said party

of the first part, each bearing date on the 10th day of January, A. D. 1885, numbered from one to sixty, inclusive, and each for the sum of one thousand dollars, and all due and payable on the 10th day of January, A. D. 1905, to bearer, at the office of the Kansas fiscal agents, in the city of New York, with interest on the same at the rate of seven per cent. per annum from and after the said 10th day of January, A. D. 1885, said interest payable semi-annually, at said Kansas fiscal agency, in the city of New York, on the 10th days of July and January of each year, and evidenced by forty coupons attached to said bonds and made a part thereof, each coupon being for the sum of thirty-five dollars and each numbered seriatim from one to forty, inclusive;

Now, therefore, the Clay Center Water Company, party of the first part, for and in consideration of the sum of one dollar
49 to it duly paid by the party of the second part, and in order to secure the payment of the principal and interest of said bonds according to the tenor thereof, as hereinbefore set forth and as fully authorized by the stockholders of said company above recited, have granted, bargained, sold, assigned, transferred, and conveyed, and by these presents do grant, bargain, sell, assign, transfer, and convey, unto the said The Farmers' Loan and Trust Company of the City of New York, party of the second part, its lawful successor or successors in the trust hereby created, all the property, real and personal, and all rights and franchises of the Clay Center Water Company used or owned by it or which may hereafter be acquired by it in said city of Clay Center, including its buildings and works for supplying the city of Clay Center with water, with all pipes of every kind for the distribution thereof, and more particularly described as follows:

First. The following-described real estate situated in the city of Clay Center, county of Clay and State of Kansas, viz:

Beginning on the south line of the right of way of the Kansas Central Railway Company, at a point where the same intersects the east line of section number seven (7), in township eight (8) south, of range three (3) east, thence westerly along the south line of said right of way two hundred (200) feet; thence south parallel with the east line of said section to the north bank of Huntress creek;
50 thence easterly along the north bank of said creek to the east line of said section seven (7); thence north along said section line to the place of beginning, being a part of lot five (5), of said section seven (7), township eight (8) south, of range three (3) east, with the appurtenances and all the estate, title, and interest of the said parties of the first part therein.

Second. All the street mains, pipes, and branches, with their connections, &c., and all fixtures and all and every sort of distributing pipes wherever now laid or which may hereafter be added thereto in the avenues, streets, and alleys or through or over other property in said city.

Third. All the privileges and franchises heretofore or hereafter acquired by the said first party under and by virtue of the several

ordinances of the city of Clay Center and the contracts between the said city and said first party.

Fourth. And also all the personal property, machinery, tools, meters, materials, and supplies now on hand and owned and used by said first party in and about said works for the prosecution of its business in said city, and also all notes, contracts, materials, and supplies which may be on hand or owned by said first party at the time of default hereinafter mentioned, should such event ever occur.

51 In trust for the several persons, firms, or corporations who may hereafter become the owners or bearers of any or either of said bonds or coupons and subject to the terms, provisions, and stipulations hereinafter mentioned.

And this indenture further witnesseth that the said party of the first part doth covenant, promise, and agree with the said party of the second part as follows, viz:

First. That it will well and truly pay or cause to be paid out of the proceeds of said bonds all the cost and expense of all work and labor done and performed and all material furnished in the repair and improvement of said works and the extensions thereof now being made and which may hereafter be made.

Second. That it will pay or cause to be paid all taxes and assessments, general or special, which may at any time or from time to time be levied and assessed upon any of the property of said first party.

Third. That it will, after ten years from the date of said bonds, annually reserve and set apart out of the net earnings or profits arising from the operation of its said works or from the assets of the company a sinking fund, to be used for the purchase of said bonds annually or to be invested in good interest-*having* securities and so held permanently for the purposes for which it is reserved.

52 Fourth. That it will pay or cause to be paid the bonds hereby secured and the interest thereon as the same becomes due and payable, according to the true tenor and effect thereof, and will at its own expense do or cause to be done all things necessary to preserve and keep valid and intact the lien and incumbrance hereby created.

Fifth. That it and all persons deriving any estate, right, title, or interest of, in, or to the herein-granted premises by, from, or under it shall and will at all times hereafter, upon the reasonable request of said second party or their successor or successors in this trust, make and execute all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted or so intended to be in or to said second party or their successor or successors *or* its or their counsel shall be reasonably advised and required.

Now, therefore, if the party of the first part shall well and truly perform the covenants and agreements herein entered into on its part and shall pay the said bonds and the interest thereon as the same becomes due and payable, according to the tenor and effect

thereof, this indenture shall be void and the property herein conveyed shall be fully released and discharged of record by the
53 said party of the second part; but if default shall be made in the payment of any interest upon either of said bonds when the same becomes due and payable and such default shall continue for ninety days after demand at the place of payment, or if default be made in erecting a sinking fund, or if default be made in the observance or performance of any of the covenants and agreements herein entered into by said first party and such default shall continue for six months after the same has been demanded or performance required, the whole principal mentioned in each and all of said bonds then outstanding and all interest due thereon shall, at the option of the holders of said bonds or any of them, forthwith become due and payable, and the said second party or its successors or successors in this trust may enter upon all and singular the premises hereby conveyed and take full possession thereof and of all property, real and personal, conveyed and intended to be conveyed hereby, and may hold, use, and operate the same until disposed of as hereinafter provided.

And in case default shall be made and continued as aforesaid the party of the second part or its successor or successors in this trust may, upon the written request of at least one-third in amount of such bonds then outstanding, foreclose this mortgage by legal proceedings or sell or cause to be sold the said premises, property, rights, and franchises hereby conveyed or intended so to be and all benefit and equity of redemption of said party of the first part in and to the same and every part thereof; which said sale shall
54 be at the time and in the manner prescribed by law.

And it is further agreed and understood that in case of the resignation, inability, or refusal of the second party to act in execution of this trust, then the holders or a majority in interest of said bonds may select and designate in writing one or more competent persons in the place and stead of said second party to execute this trust, who shall be vested with and have all the rights and powers herein conferred to said second party.

This grant and conveyance is upon the express condition that until default be made and continued as herein set forth said first party shall be permitted to possess, manage, and enjoy all the property hereby conveyed or intended to be conveyed; and upon the payment of the said bonds and the interest thereon, then the estate, title, and interest hereby granted shall cease and determine and be void, and said second party or its successor or successors in this trust shall, be entering on the margin of the records of this conveyance, fully discharge and satisfy the same without any further act or thing to be done by the parties who may have held or owned any of said bonds.

The right of action under this indenture is vested exclusively in the party of the second part as trustee, its successor or successors, and under no circumstances shall any individual bondholder or any number of individual bondholders have any right to institute an

action or other proceeding on or under this indenture for the
55 purpose of enforcing any remedy under the same, and all actions and proceedings for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the party of the second part, its successor or successors, unless and until the said party of the second part or its successor or successors shall have been requested by holders of the bonds secured hereby and then outstanding to commence a suit or take any other proceedings under this indenture and shall have been indemnified to its satisfaction for all costs, expenses, counsel fees, damages, and other charges that may be made against it for so doing and shall, after a reasonable time after such request and indemnification, which shall be at least five days, have refused so to do.

And, further, in no case shall the party of the second part or its successor or successors be compelled to commence any suit or to take any proceedings or to appear as defendant or otherwise in any suit or proceeding which may be brought against it as trustee under this indenture until it shall have been fully indemnified as aforesaid for all costs, expenses, counsel fees, damages, and other charges that may be made against it for so doing or for which it may become liable on so doing.

The party of the second part and its successor and successors in the trust shall only be responsible for reasonable diligence in the management thereof and shall not be accountable in any case for the act or default of any agent, attorney, or employee, when such person shall have been selected with reasonable discretion,
56 and it shall be entitled to be reimbursed for all its proper outlays of every sort and nature by it incurred in the discharge of this trust and to receive a reasonable and proper compensation for any duty it may at any time perform in the discharge of the same, and all such fees, commissions, compensation, and disbursements shall constitute a lien upon the mortgaged property and premises, and in no case shall the party of the second part or its successor or successors in the trust be required to procure the recording or filing of this instrument or to do anything necessary or proper to effect and maintain its lien upon the real or personal estate, or both, of the party of the first part.

And the said The Farmers' Loan and Trust Company of the City of New York, party hereto of the second part, hereby covenants and agrees on their part to accept the trust hereby imposed upon them and fairly, faithfully, and impartially perform and fulfill the same.

In witness whereof the said Clay Center Water Company, party hereto of the first part, has caused these presents to be signed by its president and attested by its secretary and has caused its corporate seal to be hereunto affixed, and the said The Farmers' Loan and Trust Company of the City of New York, party hereto of the

second part, has caused these presents to be signed by
57 its president and attested by its secretary and has caused its corporate seal to be hereunto affixed.

JOHN E. BONEBRAKE,
President Clay Center Water Company.

Attest: D. A. VALENTINE,
Sec'y Clay Center Water Company.

THE FARMERS' LOAN & TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: WM. H. LEUPP, *Secretary.*

STATE OF KANSAS, } ss:
Clay County, }

Be it remembered that on this 24th day of December, A. D. 1884, before me, the undersigned, a notary public in and for the said county and State, came John E. Bonebrake, president of the Clay Center Water Company, who is personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

A. A. GODARD,
Notary Public, Clay County, Kansas.

58 STATE OF NEW YORK, } ss:
City & County of New York, }

Be it remembered that on this 13th day of January, in the year one thousand eight hundred and eighty-five, before me, the undersigned, William H. Clarkson, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Kansas to take acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Rosewell G. Rolston, president of the Farmers' Loan & Trust Company, and William H. Leupp, secretary of the said company, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and severally duly acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] WILLIAM H. CLARKSON,
Commissioner for the State of Kansas;
Office, 54 Wall Street, N. Y.

STATE OF KANSAS, } ss:
Clay County, }

Filed for record on the 31st day of January, A. D. 1885, at 2

o'clock p. m., and recorded in volume V of M'tg's, page 481, and vol. — M'tg'es, page 103.

E. J. BONHAM, *Reg. of Deeds*,
By MARY P. COLEMAN, *Deputy*.

Certificate of Copy, etc.

STATE OF KANSAS, } ss:
Clay County, }

I, E. J. Bonham, register of deeds in and for said county and State, do hereby certify that the above and foregoing is a true, full, and correct copy of a mortgage filed for record Jan'y 31, A. D. 1885, at 2 p. m., as the same appears of record in my office in vol. V of M'tg's, in page- 481 to 498, inc.

59 Witness my hand and seal, hereto affixed at my office, in the city of Clay Center, Kansas, this 21st day of June, A. D. 1887.

[SEAL.] E. J. BONHAM,
Register of Deeds,
By MARY P. COLEMAN, *Deputy*.

Endorsed: No. 6012. U. S. circuit court. The Farmers' Loan and Trust Co. *vs.* The City of Clay Center *et al.* Bill of complaint. Filed July 15, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy. Turner, Lee & McClure, Rossington, Smith & Dallas, complainant's solicitors, Topeka, Kansas.

60 *Chancery Subpœna.*

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

The United States of America to City of Clay Center and the Clay Center Water Company, Greeting:

We command you and every one of you that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday in the month of September next, to answer the bill of complaint of the Farmers' Loan & Trust Company this day filed in the clerk's office of said court, in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you be default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Topeka, in said district, this fifteenth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

Seal of the Circuit Court of the United States, District of Kansas.

A. S. THOMAS, *Clerk*,
By FRANK H. HOLT, *Deputy*.

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

A. S. THOMAS, *Clerk*,
By FRANK H. HOLT, *Deputy*.

61 Endorsed: No. 6012. Circuit court United States, district of Kansas. The Farmers' Loan & Trust Company *vs.* The City of Clay Center *et al.* Chancery subpœna. Returnable to rule day, first Monday in September, A. D. 1887. A. S. Thomas, by Frank H. Holt, deputy. Filed July 30, A. D. 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy. Turner, Lee & McClure, Rossington, Smith & Dallas.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ July the 15th, 1887, and executed the same as follows, to wit: Served on the within-named defendants, City of Clay Center and The Clay Center Water Company, at Clay Center, Clay county, State and district of Kansas, on the 27th day of July, A. D. 1887, by delivering to J. F. Billings and A. A. Godard, to each of them personally, a true and certified — of the within writ, with all endorsements thereon, he, the said J. F. Billings, being then and there the mayor of said defendant, City of Clay Center; he, the said A. A. Godard, being then and there the president of said defendant, Clay Center Water Company.

W. C. JONES,
Marshal of the United States for the District of Kansas,
By CHARLES CURRIER, *Deputy*.

Fees:

Service	$4 00
R. R.	6 24
Hotel & B.	2 50
	$12 74

62 In the Circuit Court of the United States, District of Kansas.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTER *et al.*, Defendant-. } Appearance.

We hereby enter ourselves as solicitors for the defendant The City of Clay Centre.

JOHNSON, MARTIN & KEELER,
Solicitor- for Defendant.

Endorsed: No. 6012. In circuit court, dist. of Kansas. The Farmers' Loan and Trust Company *vs.* The City — Clay Centre. Appearance of def't. Filed Aug. 25, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy. Johnson, Martin & Keeler, att'ys for def't.

63 In the Circuit Court of the United States for the District of Kansas.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTRE, KANSAS, and The Clay Centre Water Company, Defendants.

6012. Answer of the Defendant The City of Clay Centre.

And now comes The City of Clay Centre, one of the defendants herein, and, for its answer to the complainant's bill of complaint herein, says:

1. That said City of Clay Centre has never entered into the contract alleged in said bill of complaint nor into any contract or agreement to pay any interest whatever on the bonds mentioned in said bill or upon the coupons thereto attached.

2. No such ordinance as that described in said bill and referred to as ordinance No. 64 of said city, entitled "An ordinance to provide a system of water works and supply of water to the city of Clay Centre and the inhabitants thereof," was ever passed or adopted by said city or by the mayor and council thereof in the manner required by law, and there was never any such valid ordinance of said city. No such ordinance was ever read, considered by sections, or passed at any public meeting of the council of said city nor at any regular meeting of said council nor at any special meeting of said council called by the mayor of said city on the written request of any three members of the council thereof.

3. The execution of the contract alleged in said bill (of
64 which Exhibit "A," attached thereto, is a copy) by C. E. Gifford, as mayor of said city, was of no force or effect to bind or obligate said city, because said C. E. Gifford had no authority as mayor or otherwise to make such contract for or on behalf of such city. There was never any valid ordinance of said city giving him any such authority.

4. There is nothing due from said city for hydrant rental under or in pursuance of said alleged contract. Said city never entered into such contract and never agreed to or with the defendant, The Clay Centre Water Company, that said city would pay any hydrant rental whatever.

5. The defendant, The City of Clay Centre, further says that in the latter part of the year 1883 the John E. Bonebrake mentioned in said bill entered into a fraudulent conspiracy with C. E. Gifford, who was then the mayor of said city, and with Ira A. Flood, one of the councilmen of said city, who was then president of the council of said city, and A. A. Goddard, the city clerk of said city, and with

other councilmen and officers of said city, for the purpose of obtaining from said city an exorbitant price for water to be furnished to it for fire and other purposes, whereby enormous profits would accrue to and be divided among said conspirators, and it was then understood and agreed by and between said conspirators that immediately after the passage of an ordinance and the making of a contract for such purpose the said water company should be incorporated and should become the assignee of said Bonebrake as to all of the matters aforestated, and that said Gifford, Flood, Goddard, and the other conspirators should become stockholders of said company.

65 In pursuance of said conspiracy a negotiation was ostensibly carried on between said conspirators for the construction and operation of water works in said city. In such ostensible negotiations said Bonebrake assumed to be one party to a projected contract for the construction of water works and the other conspirators assumed to act as officers on behalf of said city, and said conspirators proceeded to have formal negotiations with each other, in which, at purported council meetings, they went through with the formality of a conference, the appointment of a committee, the report thereof, a proposition from said Bonebrake, and a solicitation that said Bonebrake prepare and submit a contract; all of which was ostentatiously entered in the journal of said council. Afterwards, at purported meetings of said council, on December 18th and 19th, 1883, and on January 8th, 1884, the said alleged ordinance No. 64 was presented to and in form passed and enacted by a portion of said councilmen. A copy of the entire record of said meetings as the same was entered in the journal of said council is hereto attached in Exhibit "A" and made a part hereof. There was never any other or further passage or attempted passage of said ordinance. Neither of said meetings were public meetings of said council, but, on the contrary, they were convened in such manner as to be entirely unknown to the public. Neither of said meetings was a regular meeting of said council and neither of them was called as a special meeting in pursuance of law. No written request of any three members of said council specifying the object and purpose of such meeting was ever read at either of said meetings or entered on the journal of said council, and no such request was ever made or served upon the members of said council.

66 On the contrary, said meetings were brought about without any such request and were had in pursuance of the conspiracy aforesaid with so much haste and eagerness on the part of said conspirators that they overlooked and neglected the formalities required by law for convening the council in a valid special meeting, the same occurring at such times as said Bonebrake came to said city to assist in the furtherance of the scheme of said conspirators to defraud said city. Said Gifford's authority to execute said alleged contract as mayor or otherwise on behalf of said city is derived solely from the acts and proceedings aforesaid of the officers of said city and their further proceedings as the same *is* found recorded in the journal of said council under date of January 23rd, 1884, a copy of which record is hereto attached in Exhibit

"A" and made a part hereof. The said proceedings were not proceedings of the council of said city, but were simply proceedings of meetings of said conspirators.

Afterwards, on July 7th, 1884, said conspirators had another meeting, purporting to be a special meeting of the council of said city (but which was not a valid meeting of such council), at which they undertook and assumed by resolution to extend the time for the completion of said water works to July 1st, 1885, and undertook and assumed by resolution to amend said pretended ordinance No. 64.

Afterwards, on November 18, 1884, said conspirators had a further meeting, purporting to be a special meeting of said council (but which was not a valid meeting of said council), at which they undertook and assumed by resolution to further modify said alleged contract and to further amend said alleged ordinance No. 64.

Copies of the entire records of all of the meetings mentioned in this answer, as the same appear in the journal of said council, are hereto attached, marked Exhibit "A," and made a part of this answer.

67 Afterwards, on May 28th, 1885, said conspirators had a further meeting, purporting to be an adjourned session of a special meeting of the council of said city (but which was not a valid meeting of such council), at which they undertook and assumed on behalf of said city to accept said water works and to accept the performance of said contract as modified by the resolutions aforesaid.

Prior to said assumed acceptance the said water company was incorporated and had succeeded to all the rights of said Bonebrake under said alleged contract with said city and said Gifford, Flood, Goddard, and the other conspirators had become and still were stockholders therein.

None of the meetings hereinbefore mentioned were regular meetings of the council of said city and none of them were special meetings of such council called on the written request of any three members thereof, but all of them were meetings of said conspirators, and all the acts and proceedings of said conspirators hereinbefore mentioned and all their acts of and concerning said water works, said ordinance, and said contract have been done for the purpose and with the intent of defrauding said city by obtaining from it an exorbitant price for water. The price named in said contract to be paid by said city was at least four times the amount of a fair and reasonable price for the water to be furnished according to the terms thereof.

By reason of the matters hereinbefore stated the said defendant, The City of Clay Centre, is not a party to and is in nowise bound by the terms of said alleged contract, and there is no privity of contract whatever between said city and the complainant herein nor between

68 said city and the holders of the bonds of said Clay Centre Water Company, and there is nothing due to said water company from said city under or by reason of the said alleged contract and said ordinance No. 64 or either of them.

The plaintiff cannot lawfully recover from said city in this action,

because no claim for all or any part of the hydrant rental sued for herein was ever presented in writing or verified as provided for and required by section 70 of chapter 19 of the General Statutes of the State of Kansas.

F. B. DAWES AND
JOHNSON, MARTIN & KEELER,
Attorneys for Defendant, The City of Clay Centre.

EXHIBIT "A."

COUNCIL CHAMBERS, *December 18th*, 1883.

Council met in special session pursuant to the following call:

CLAY CENTER, KAN., *Dec. 18th*, 1883.

To Wm. Carson, city marshal*l*:

You will please notify the members of the city council that there will be a special meeting of the council to-night, Dec. 18, 1883, at 7.30, to consider a proposition in regard to water works and any other business that may come before it.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford, Councilman Flood, Grubs, Lutt, and Kehoe.

Absent: Councilman Warren and Henry.

Mr. John E. Bonebrake was present and presented an ordinance in reference to water works, which was read.

On motion, a committee was appointed to locate water mains and to report at the next meeting. The mayor appointed as such
69 committee Councilman Flood, Grubs, and Henry.

On motion, council adjourned until Wednesday, Dec. 19th, at 3 p. m.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *Dec.* 19, 1883.

Council met pursuant to adjournment.

Present: Mayor Gifford, Councilman Flood, Grubs, Lutt, Warren, and Henry.

Absent: Councilman Kehoe.

Councilman Flood asked leave to introduce an ordinance entitled An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof, which leave being granted the ordinance was introduced and read for the first time.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

Page 210.

CLAY CENTER, KANSAS, *Jan. 8th*, 1884.

Council met in special session pursuant to the following call:

CLAY CENTER, KAS., *Jan. 8th*, 1884.

To Wm. Carson, city marshall:

You will notify the members of the city council & the city att'y that there will be a special meeting of the city council to-night at 7.30 p. m. for the purpose of considering an ordinance in regard to water works and any other business that may come before them.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford, presiding, and Councilmen Flood, Grubs, Lutt, Warren, and Henry.

Councilman Kehoe absent on account of sickness.

70 The ordinance entitled An ordinance — provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof was read for the second time section by section and so adopted.

The question then being put, "Shall the ordinance pass," Councilmen Flood, Grubs, Lutt, Warren, and Henry voted "aye," Councilman Kehoe absent and not voting, and the ordinance was declared duly passed.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

CLAY CENTER, *Jan. 23d*, 1884.

Council met in special session pursuant to the following call:

CLAY CENTER, KAN., *Jan. 23*, 1884.

To Wm. Carson, city marshall:

You will please notify the members of the city council that there will be a meeting of the city council to-night, Jan. 23d, 1884, at 7 o'clock p. m. for the purpose of executing a contract with J. E. Bonebrake with reference to water works according to ordinance No. 64.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford and Councilmen Flood, Grubs, Lutt, and Henry; John E. Bonebrake was present and presented a contract for water works in accordance with ordinance No. 64, which was read by the clerk.

On motion of Mr. Flood, the mayor and city clerk were authorized to execute said contract, all the councilmen present voting "aye."

On motion, adjourned.

Attest: A. A. GODARD, *City Clerk.*

71 COUNCIL CHAMBERS, CLAY CENTER, KS., *July 7th*, 1884.

Council met pursuant to the following call:

MAYOR'S OFFICE, CLAY CENTER, KANSAS, *July 7th*, 1884.

To William Carson, city marshal*l:*

You will please notify the members of the city council that there will be a special meeting of the council to-night, July 7th, at 8 o'clock p. m. to take action in regard to water works.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford and Councilmen Wickstrum, Flood, Kirby, & Henry; Councilmen Warren and Lutt absent.

Mr. Bonebrake was present and asked an extension of time in which to complete the water works for the city, and the following resolution was introduced by Councilman Flood:

Resolved, That the time stated in ordinance No. 65 and in the contract made thereunder between the city of Clay Center and J. E. Bonebrake for the completion of the water works under said ordinance and contract be, and the same is hereby, extended to July 1st, 1885, upon these conditions, to wit: That the said J. E. Bonebrake or his assigns shall, before the first day of November, 1884, lay water mains on Fifth street, Lincoln avenue, and Court street, with not more than ten or less than eight hydrants, according to said contract, and furnish water supply sufficient to throw three streams each eighty feet in height for fire purposes; then in such case, upon the completion of said water works, the city council shall, if satisfactory, approve the part so completed, and such approval and the payments due therefor shall date from the completion of such

72 mains above mentioned, payment for such hydrants to be made at the rate of seventy-five dollars per annum rental.

Which resolution was duly seconded and carried.

On motion, adjourned.

Attest: A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KAS., *May 28th*, 1885.

Council called to order.

Present: Mayor Walton, Councilmen Fraizer, Biehl, Kibbey, and Wickstrum.

Absent: Councilmen Dexter and Miller.

Councilman Wickstrum moved the adoption of the following resolution:

Resolved, That the water works company having complied with that portion of section 3 of ordinance No. 64 which provides that "the water works shall have a sufficient capacity to throw four streams eighty feet high or maintain its equivalent in pressure from any four of the hydrants hereinafter mentioned, said streams to be thrown through one-inch ring nozzles at the end of fifty feet of two and one-half inch hose; all mains shall be of standard height and strength water pipe and be covered by a sufficient depth of earth to prevent freezing, and said water works and every part thereof shall be of sufficient power and capacity to furnish the

water contemplated and provided for in this ordinance," to the satisfaction of the council, the water works be accepted by the city of Clay Center, Kansas.

The roll being called, Councilmen Fraizer, Biehl, Kibby, & Wickstrum voted "aye," and the resolution was unanimously carried.

Adjourned.

A. L. RUNYAN, *City Clerk.*

Page 39, Record C.

73 Endorsed: No. 6012. U. S. circuit court, district of Kans. The Farmers' Loan & Trust Co., plaintiff, *vs.* The City of Clay Center *et al.*, defendant-. Answer of def't. Filed Oct. 1, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy. F. B. Dawes and Johnson, Martin & Keeler, att'ys for def't.

74 In the Circuit Court of the United States for the District of Kansas.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTER, Defendant.

The replication of the complainant, The Farmers' Loan and Trust Company, to the answer of The City of Clay Center, defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material *of* effectual in the law to be replied unto, confessed and avoided, traversed or denies, is true; all — matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

ROSSINGTON, SMITH & DALLAS,
Complainant's Solicitors.

Endorsed: No. 6012. The Farmers' Loan and Trust Company *vs.* The City of Clay Center. Replication. Filed Nov. 7, 1887. A. S. Thomas, clerk.

75 In the Circuit Court of the United States for the District of Kansas.

THE FARMERS' LOAN & TRUST CO., Plaintiff,
vs.
THE CITY OF CLAY CENTER, Defendant.

It is hereby stipulated and agreed that the time for the taking of testimony in the above-entitled cause shall be extended for 30 days from the 18th day of February, 1888.

And it is further agreed that testimony on behalf of both plaintiff and defendant shall be taken in Clay Center, commencing on Tuesday, the 28th day of February, 1888, before a notary public, at Clay Center, at the office of the city clerk or at such other place as shall then be agreed upon in Clay Center, orally, both parties to this stipulation waiving formal notice of the taking of said testimony.

It is further stipulated and agreed that at the conclusion of the taking of said testimony the case shall be submitted for final hearing upon pleading, proof, and argument not later than the first Monday in April.

Dated at Topeka, Kansas, this 18th day of February, A. D. 1888.

ROSSINGTON, SMITH & DALLAS,
P'ff's Solicitors.

JOHNSON, MARTIN & KEELER,
Solicitors for D'f't City of Clay Center.

Endorsed: No. 6012. The Farmers' Loan & Trust Co. *vs.* The City of Clay Center. Stipulation. Filed Feb. 21, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

76 THE STATE OF KANSAS:

In the Circuit Court of the United States, District of Kansas.

The State of Kansas to O. F. Lutt, W. H. Fletcher, W. E. Duanway, U. H. Emick, and J. M. Frank:

You and each of you are hereby commanded to be and appear before me, H'y W. Stackpole, a notary public of said county, at my office, in Clay Center city, in said county, on the 29th day of May, A. D. 1888, at 9 o'clock a. m. of said day, then and there to give testimony in an action pending in circuit court of the United States, district of Kansas, wherein The Farmers' Loan and Trust Co. is plaintiff and The City of Clay Center *et al.* are defendants, on behalf of said defendant city.

Hereof fail not under the penalty of the law.

Given under my hand this 28th day of May, 1888.

[SEAL.] H'Y W. STACKPOLE,
Notary Public.

My commission expires 10, 4, 1891.

Endorsed: Subpœna. The Farmers' Loan and Trust Co., plaintiff, *vs.* The City of Clay Center *et al.*, defendants. Issued May 28, 1888. Returnable May 29th, 1888. Filed before me this 28th day of May, 1888. H'y W. Stackpole, N. P.

Received this writ this 28 day of May, A. D. 1888, and on the 28 day of May, A. D. 1888, I served the same on the within-named O. F. Lutt, W. H. Fletcher, W. A. Dunaway, U. H. Emick, and J. M. Frank by reading to each one of them personally.

G. W. MARTIN, *Sheriff.*

Fees, $1.25.

77 STATE OF KANSAS, } ss:
County of Clay, }

Before H'y W. Stackpole, a notary public in and for the county of Clay and State of Kansas.

Depositions of witnesses taken before me, a notary public within and for the county of Clay, in the State of Kansas, on the 29th day of May, 1888, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at Clay Center, in said county, pursuant to annexed agreement, in an action pending in the circuit court of the United States within and for — district of Kansas, wherein The Farmers' Loan and Trust Co. is plaintiff and The City of Clay Center and The Clay Center Water Company are defendants.

The said plaintiff appeared by its attorneys, Harkness & Godard, and the said defendant The City of Clay Center appeared by F. B. Dawes, its att'y, and said defendant The Clay Center Water Company not appearing.

Thereupon the said defendant city produced the following witnesses in the following order:

O. F. LUTT, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

By consent of parties said examination was continued till May 30th, at 9 a. m.

Examination of O. F. Lutt.

Question. State your name and place of residence.

Answer. O. F. Lutt; Horton, Kansas.

Q. Where did you reside during the years 1883 and 1884?

A. Clay Center, Kansas.

Q. Are you the O. F. Lutt who was a member of the city council during those years?

A. I am.

Q. Do you remember the fact of the pretended passage of what was commonly called the "water-works ordinance"?

A. I do.

Q. Do you remember of any amendment or amendments being suggested to that ordinance by myself when it came up for a second reading?

(Plaintiff objected to same as immaterial.)

78 A. I do.

Q. What was the nature of that suggestion?

(Plaintiff made same objection.)

A. I recollect the suggestion of Mr. Dawes that bonds should be given by Mr. Bonebrake for the completion of the works within a specified time.

Q. What members of the council were present at that time?

(Objected to by plaintiff as being incompetent and not the best evidence.)

A. I recollect of Flood, Grubs, Henry, and myself being there. I wouldn't be sure whether Warren was there or not. I presume he was, but I don't recollect whether he was or not.

Q. Where was that meeting held?

A. That meeting was held at the office of Harkness & Godard.

Q. During the consideration of the water-works ordinance how many meetings were held at the office of Harkness & Godard?

(Objected to by plaintiff as incompetent, irrelevant, and immaterial and as not being the best evidence.)

A. There were some meetings held prior to this one at the same place; do not recollect how many.

Q. At what hour in the day was this particular meeting held of which you speak?

A. It was early in the evening. I couldn't tell the time exactly. I recollect the curtains were drawn. I don't recollect whether the lights were lit when we came in or not. I don't think they were.

Q. At any of these meetings did Mr. Bonebrake say anything concerning citizens of Clay Center taking stock in a company to be organized for the purpose of building water works?

A. Yes.

Q. What was it?

A. Bonebrake said that unless citizens here would interest themselves and take stock to a certain amount he would not think of—I don't know just how he expressed himself—well, he did say just this: that if the capitalists at home did not feel safe in an investment of that kind nor had confidence enough in their own town that strangers could not be expected to make an investment of that kind, nor would he under any circumstances.

Q. Did you shortly afterwards have any conversation with Mayor Gifford concerning that statement which Mr. Bonebrake had made; and, if so, what was it?

A. I expressed fear to Mr. Gifford that if much money had to be invested by people here that the water-works project would fall through. Mr. Gifford simply answered to go on and pass the ordinance and that would be all right.

(Cross-examination by Mr. F. P. HARKNESS:)

Q. You are a brother-in-law of H. W. Miller, one of the present counsel, are you not?

A. Yes.

Q. When were you subpœnaed to appear and testify in this case?

A. On the evening of the 28th of this month.

79 Q. Have you had any talk with Mr. Miller about this matter since the city closed its depositions the other day?

A. I did not know of any depositions — had been taken.

Q. Have you had any talk with him within the last few days?

A. I had; yes.

Q. What was the date of the meeting held in the office of Harknes & Godard referred to in your direct testimony?

A. I don't know.

Q. Where was the city clerk's office at that time?

A. I presume it was at the office of Harkness & Goddard.

Q. Was not Mr. Goddard, of the firm of Harkness & Goddard, city clerk at that time?

A. Yes.

Q. Were not the city records, books, and papers kept at the office of Harkness & Goddard at that time?

A. They were supposed to be kept there.

Q. Don't you know as a matter of fact that they were kept there and the *the* registration books were kept there, the licence records were kept there and issued from that office, and that the books pertaining to the city cemetery were kept there, and in fact that that was the city clerk's office?

A. Yes.

Q. Have you any distinct recollection as to the hour at which the meeting referred to in your direct examination was held?

A. I have.

Q. State the hour.

A. It was about 6 or 7 o'clock—between 6 and 7, I think.

Q. How did you happen to attend that meeting?

A. I could not distinctly say that. I presume by regular call.

Q. What do you mean by regular call?

A. A notice served on me by the marshal.

Q. Did you have any other notice than that served upon you by the marshal?

A. None that I know of.

Q. If, then, the notice served upon you by the marshal stated that the meeting would be held at 7.30 o'clock that evening, is it probable that you went to the city clerk's office for the purpose of attending that meeting between 6 and 7 o'clock?

A. It would be in that case, perhaps, as in others, where the marshal would, by order of the mayor, change the hour of meeting afterwards to suit the convenience of others.

Q. Did that meeting convene before or after dark?

A. It was shortly after dark, according to my recollection.

Q. Had the meeting been called to order at the time of your arrival?

A. I don't recollect.

Q. Were the mayor and other members of the council or any of them present at the time of your arrival?

A. I know some of them were; all of them may have been there.

Q. Were or were not the lights lighted at the time of your arrival?

A. I don't recollect.

Q. How, then, do you know that the curtains were down?

A. I never stated that the curtains were down. I never said they were down; that is a mistake. I said they were drawn during the meeting.

Q. At what time during the meeting were the curtains drawn, by whom, and for what purpose, if you know?

A. I don't know why they were drawn. I simply remem-
80 ber the circumstance. They were drawn shortly after I entered, I don't know by whom.

Q. If there were any curtains on these windows at that time, what kind of curtains were they and in what manner were they drawn?

A. I don't recollect.

Q. There were two windows in that office, were there not?

A. Yes.

Q. And the office was on the second story of the building?

A. Yes.

Q. Those windows opened out of the rear of the building over a vacant back yard, ext-ing some 60 or 75 feet to the alley—that is, it was somewheres from 60 to 75 feet from the rear of the building to the alley, and the yard was enclosed by a high board fence. Are not these the facts in the case?

A. Yes.

Q. Was this statement which you say Mr. Bonebrake made in reference to the citizens of Clay Center taking stock in a company to be organized for the purpose of building water works a public statement made to the entire council?

A. Yes.

Q. Was the statement made at the meeting to which you have referred as being held in the city clerk's office?

A. It was not the principal meeting referred to; it was at one prior to that one, at the city clerk's office.

Q. Was the principal meeting you speak of the one at which the water-works ordinance was passed?

A. That's the way I understand it; yes.

Q. How long was it before that principal meeting, as you term it, *was it* that Mr. Bonebrake made that statement?

A. I could not now state how much time intervened.

Q. Were the curtains drawn at the clerk's office at that meeting of the council?

A. I think not; that meeting was held some earlier in the evening.

Q. How many meetings prior to that held at the city clerk's office?

A. I do not distinctly remember but three prior to this.

Q. Were any of those meetings held for purposes other than the consideration of the water-works proposition?

A. I remember but one held for other purposes.

Q. If you knew at the time of any reason or reasons why they were held at the clerk's office you may state what they were.

A. I don't know of any reason now, unless it was convenience.

Q. Did Mr. Bonebrake state to the council why he wished citizens to take stock in a company to be formed; if so, what did he state?

A. He said if citizens here did not consider it a safe investment and show confidence in the undertaking he would not go in either.

O. F. LUTT.

STATE OF KANSAS, } ss:
County of Clay, }

I, a notary public within and for the county of Clay, in the
81 State of Kansas, do hereby certify that O. F. Lutt *were* by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, and that the deposition by *them respectively* subscribed as above set forth *were* reduced to writing by myself in presence of the witness and *were respectively* subscribed by said witness in my presence and taken at the time and place specified in the annexed stipulation, and that I am not a relative, council, or attorney of either party or otherwise interested in the event of this action or proceeding.

Witness my hand and notarial seal, at Clay Center, in the said county, this 30 day of May, A. D. 1888.

[SEAL.] H'Y W. STACKPOLE,
Notary Public.

My commission expires 10, 4, 1891.

82 *Subpœna.*

No. 16.

THE STATE OF KANSAS, } ss:
Clay County, }

In the U. S. Circuit Court for Kansas.

The State of Kansas to Wm. Carson, J. M. Frank, C. E. Gifford, and Ira A. Flood:

You and each of you are hereby commanded to be and appear before me, H'y W. Stackpole, a notary public of said county, at my office, in Clay Center city, in said county, on the 26th day of May, A. D. 1888, at 9 o'clock a. m. of said day, then and there to give testimony in an action pending in the U. S. circuit court for Kansas, wherein The Farmers' Loan and Trust Co. is plaintiff and The City of Clay Center *et al.* are defendants, on behalf of said defendant city.

[SEAL.] Hereof fail not under the penalty of the law.
Given under my hand this 25th day of May, 1888.

H'Y W. STACKPOLE,
Notary Public.

My commission expires 10, 4, 1891.

[Endorsed:] Subpœna. The Farmers' Loan and Trust Co., plaintiff, *vs.* The City of Clay Center *et al.*, defendants. Issued May 25, 1888. Returnable May 26, 1888. Filed before me this 26th day of May, 1888. H'y W. Stackpole, N. P.

Received this writ this 25 day of May, A. D. 1888, and on the 26 day of May, A. D. 1888, I served the same on the within-named Wm. Carson, J. M. Frank, C. E. Gifford, and Ira A. Flood by reading the same to each one of them personally.

G. W. MARTIN, *Sheriff.*

Fees:

Service, 1 persons	$ 50
3 additional	75
Cop.	
Total	$1 25

83 *Deposition.*

STATE OF KANSAS, } ss:
County of Clay, }

Before H'y W. Stackpole, a notary public in and for the county of Clay and State of Kansas.

Depositions of witnesses taken before me, a notary public within and for the county of Clay, in the State of Kansas, on the 26th day of May, 1888, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at Clay Center, in said county, pursuant to annexed agreement, in an action pending in the circuit court of the United States, district of Kansas, wherein Farmers' Loan and Trust Co. is plaintiff and The City of Clay Center and The Clay Center Water Co. are defendants.

The said plaintiff, by its attorneys, Harkness and Goddard, appeared, and the said defendant The City of Clay Center appeared by its att'y, F. B. Davis, said defendant The Clay Center Water Co. not appearing.

Thereupon the said defendant The City of Clay Center produced the following witnesses in the following order:

W. J. CARSON, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. What is your name?
A. W. J. Carson.
Q. Your age?
A. Forty-seven.
Q. How long have you resided in the city of Clay Center, Kansas?
A. Ever since 1872.

Q. What official position did you hold in the city of Clay
84 Center, Kansas, in the years 1883 and 1884?
A. City marshal and street commissioner.

Q. Were you the city marshal of the city of Clay Center on January 8th, 1884?
A. Yes, sir.
Q. Do you remember the time of the pretended passage of an ordinance which pretended to grant the right to one J. F. Bonebrake, successors and assigns, to construct water works in the city of Clay Center, Kansas?
A. I think I do.

Q. Do you remember the date of the pretended passage of that ordinance?

A. I think it was about January 8th; along there.

Q. You may state whether you remember that meeting of the council at which it was passed.

A. Yes; I do.

Q. State how many members of the council, if any, you notified that there would be a special meeting of the council *of the council* on that evening.

A. I think I notified 5—Mr. Keogh being sick. I did not go up, he being sick. I thought it was no use, and reported so.

Q. You reported that he was sick?

A. Yes, sir.

Q. Where was that meeting held?

Mr. HARKNESS: Do the records show that?

Mr. DAWES: No.

Mr. HARKNESS: Plaintiff objects to the question on the ground that the records of the city *is* the best evidence, and that the same cannot be disputed or contradicted by the city.

A. I think it was held in Harkness & Goddard's office.

85 Q. At what time of day of January 8th was that meeting held?

Mr. HARKNESS: Plaintiff objects on the same grounds as *is* stated to the preceding question.

A. I think it was directly after the train came in, in the evening. Somewhere near six o'clock or along there; about that time.

Q. State what reasons you have, if any, for believing that it was held at that hour.

A. Well, I think Mr. Bonebrake was to come in on the evening train and wanted to go out on the next train, which was to go out about 7 or 8 o'clock.

Q. I will ask you if you remember making a second trip to notify any one of the hour of meeting earlier than 7.30 o'clock.

A. I don't know whether I did or not; couldn't say for sure.

Q. Give your best recollection on that.

A. I don't recollect whether I did or not.

Q. Were you present at that meeting?

A. I don't think I was all the time. I think as soon as the council got together I left, or about that time.

Q. State if you remember who was present besides the members of the council present at that time.

A. I couldn't say. Mr. Bonebrake and several—somehow I think there was some other man with him. I wouldn't be sure; there might have been two or three. I couldn't say exactly who they was.

Q. Where was Harkness & Goddard's office situated at that time, giving the street and on what side of the street it was?

A. Well, it was on Lincoln avenue, on the south side of the street.

I guess it was in the rear of Grub's building, where the probate court is now.

Q. Up stairs or down?

86 A. Upstairs.

Q. Where was the regular place of meeting of the council at that time—what was known as the council chamber?

A. It was known as Elniff's hall, on Lincoln avenue, ain't it, I think?

Q. Just study over that a little bit.

A. No; it wasn't Elniff's hall, either. It was the Old Guard hall, the building that I think a man by the name of Allison built—started it.

Q. I would ask you to refresh your memory a little and state whether or not it wasn't held in the front room; whether or not the council chambers were not at that time in the front room over the Clay County bank.

A. I guess it was. They moved there once or twice in the next room. I guess they were up there over Higginbotham's bank.

Q. Whose bank?

A. Higginbotham's.

Q. What is that bank called—what is the name of it?

A. Clay County bank.

Q. On what side of the street is the Clay County bank?

A. On the north side of Lincoln avenue.

Q. What direction from where Harkness & Goddard's office was at that time?

A. West and north.

Q. About how far west—what part of a block?

A. About half a block, I should judge.

Q. On the opposite side of the street?

A. Yes, sir.

Q. Do you remember a meeting of the council held for the pretended purpose of entering into a contract under such pre-

87 tended ordinance with the said John E. Bonebrake?

A. I think I do.

Q. About when was that meeting held?

A. I couldn't say exactly; some time—you mean when they closed the contract?

Q. Yes, sir.

A. For the water works?

Q. No, sir; when they entered into a pretended contract with John E. Bonebrake.

A. It was—I couldn't say exactly; along the latter part of 1883, I believe.

Q. Was it prior or subsequent to the passage of the ordinance?

A. Before, I think.

Q. During the pendency of that water-works question, the ordinance, and the entering into of the contract how many meetings for that purpose were held in the office of Harkness & Goddard?

Mr. HARKNESS: Plaintiff objects on the ground that the records

are the best evidence as to where the meetings of the city council were held; that such records cannot be disputed or contradicted by the city, and, further, that the question is immaterial and irrelevant.

A. Well, I couldn't say. There was two or three, I think.

Q. Where was the meeting of the council held at which the council or members of the council and mayor and clerk undertook to enter into a contract with the said John E. Bonebrake for the construction of water works, if you know?

Mr. HARKNESS: Plaintiff makes same objection as to last preceding question.

A. There was one meeting at the time that Mr. Bonebrake made his proposition to them and read it to them, or whatever you call it. It was over Higginbotham's bank. Then he fixed up
88 his written proposition to the city. It was over the Clay County bank, in the front room.

Q. But where was the meeting held at which the pretended contract was actually signed?

A. Well, I think it was in Mr. Goddard's office and Harkness's.

Q. Was Harkness & Goddard's office at the time at the same place it was when the ordinance was passed?

A. Yes; I think it was.

Q. You speak of the council meeting at what was known as Guard's hall a portion of the time in the years 1883 and 1884, using that as the council chambers. You may state where Guard's hall was situated.

A. It was situated over the next room west of Higginbotham's bank—Clay County bank—upstairs; was used as the Guard hall in town for awhile.

Q. State whether the same stairway goes into Guard's hall and into the room over Higginbotham's bank.

A. Yes, sir.

Cross-examination by Mr. F. P. HARKNESS:

Q. How are you able to recollect the date of the meeting at which the water-works ordinance was passed?

A. On the 8th day of January.

Q. How are you able to recollect?

A. Well, I recollect it; that is all—that is, I think that was the time.

Q. Do you remember from that day until this without any particular aid to your recollection that that was the date?

A. Well, I most generally understood that that was the date.

Q. When did you understand it?

89 A. That is, when it was passed. I thought that was about the time, January 8th, along there, 1884.

Q. Is it not a fact that Mr. Dawes has given you that date this morning before you went on the stand?

A. No; I don't know as Dawes—no; Mr. Dawes didn't.

Q. Or showed you the record of something to refresh your recollection?

A. No, sir; he did not.

Q. Has not the date been mentioned to you by any one interested in this suit since the passage of that ordinance?

A. No, sir.

Q. How many were present at that meeting?

A. How many councilmen?

Q. How many people?

A. Well, I don't exactly remember. I got the council together, what there was, and skipped out.

Q. You got the city council together, what there was, and skipped out?

A. I think so. I was down on the street somewhere.

Q. How sick was Mr. Keogh at that time?

A. Well, I think I went to the store and asked for Mr. Keogh and they said he was at home sick.

Q. Do you know as a matter of fact that he was sick abed so he couldn't get out?

A. That was the understanding; that is what the clerks told me, and I thought there was no use of going up after him if he was so he couldn't come down.

Q. After you had got the council together, what there were of them, you skipped out. How do you know what business was transacted by the city council at that meeting?

90 A. Well, that is, of course, what was reported and what was showed in the papers. I think next day that they had passed the water ordinance.

Q. Then you are testifying to what was reported in the newspapers next day, as you now recollect it?

A. Well, not only newspapers, but everybody appeared to be glad over it. We were glad to have the water works.

Q. You recollect the date from the fact that everybody was talking about it next day and it was published in the newspapers?

A. Well, I expect I do.

Q. You say that people generally seemed to be glad that the city was going to have the water works?

A. Well, I don't know as they appeared to be particularly glad. They was all talking, just like talking over water works—going to have water works—and that is all there was to it; didn't appear to be glad or appear to be mad.

Q. Then when you say that the ordinance was passed at a meeting of the council held on the 8th day of January, 1884, you are not testifying from any recollection you have by reason of being present, but what you heard afterwards?

A. Well, I don't know but what I was present part of the time.

Q. Well, answer the question.

A. I don't know whether I was present all of the time there or stayed part of the time. My understanding was that the ordinance was passed at that time.

Q. State whether or not Mr. Bonebrake was not present at several meetings of the council during the pendency of that proposition.

A. I think he was.

Q. Frequently came in from Abilene on the train; attended a meeting of the council that same evening, did he not?

91 A. Yes, sir.

Q. That wasn't an unusual occurrence at all?

A. Well, no; he was down; come on the passenger in the evening, and then sometimes aimed to go out on the freight back in the evening.

Q. Have you any recollect- as to how long before that it was that the contract was signed by Mr. Bonebrake and the city in regard to the water works—signing of the contract?

A. Before that?

Q. How long before that it was.

A. Well, I don't think it was before that at all. I think it was that night.

Q. Do you understand that the ordinance was passed then and the contract signed the same night?

A. I wouldn't be sure about that.

Q. I presume, then, you were not present at the time that the contract was passed?

A. I couldn't say for sure whether I was or not.

Q. You don't recollect being present at the time it was signed, do you?

A. No; I do not.

Q. Is it not a fact that it was your general practice as city marshal under the direction of the mayor to notify the several members of the council of any special meeting that was called by the mayor and after you had got them together, as you stated, your duties in connection with that meeting were practically ended, and you went out upon the street to look after your other duties of city marshal?

A. Yes; I mostly always did, unless it was on a regular meeting, when I was supposed to be there.

92 Q. For the purpose of having your bill allowed for your month's services?

A. Yes; and the reports.

Q. But at all other times it was your custom after getting the council together to go out on the street and attend to your other duties usually; that was your usual practice?

A. Most generally I never bothered much around there.

Q. You were not required by the mayor or council to be present at such meetings after the council had assembled and commenced the transaction of business, were you?

Mr. DAWES: We object as being incompetent, irrelevant, and immaterial and not being the best evidence; that his duties are prescribed by the laws of the State and the ordinances of the city.

Mr. HARKNESS: We shall not insist upon the question; that is all.

IRA J. FLOOD, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. State your name, age, and place of residence.

A. Ira J. Flood; 47 years old; Clay Center, Kansas.

Q. How long have you lived in Clay Center?

A. 12 years the 2nd day of next May.

Q. In the years 1883 and 1884 what official position did you hold in the city of Clay Center, Kansas?

A. I was a member of the city council—president of the council, I believe; for a part of the time at least.

Q. State whether or not you were president of the council at the time of the meetings of the council, or pretended meetings rather, when the question of what is known as the water-works ordinance was pending before the council.

93 A. Yes, sir.

Q. When did you cease to become a member of the city council?

A. Well, the records show when I resigned. I resigned when he came in.

Q. I would ask you if at the time of the organization of the Clay Center Water Company you became a stockholder in the said Clay Center Water Company.

A. I did not.

Q. Have you since that time become a stockholder in said water company?

A. Yes, sir.

Q. When did you become a stockholder in the water company?

A. I don't know that I could tell you exactly.

Q. About when—how long after its organization?

A. (Consulting memorandum.) In December, 1884; I bought some stock in December, 1884; that is the date I got the stock—December, 1884.

Q. When were the water works in the city of Clay Center completed?

A. Well, sir, I can't tell you; I don't know.

Q. State whether or not they were comp-eted at the time you bought your stock.

A. Well, I can't tell you that now, whether they were completed then or not—that is, the time I bought my stock.

Q. Don't you know it is a fact that they weren't completed till June, 1885?

A. No, sir; I don't know that that is a fact, but my impression is that they weren't completed when I bought my stock.

Q. State whether or not you are an officer of the Clay Center Water C. now.

94 A. Yes; I am superintendent of the Clay Center Water Company.

Q. Who is president of that company now?

A. Mr. Goddard.

Q. Who is secretary?
A. Mr. Valentine.
Q. You were still president of the council when you bought your stock in the Clay Center Water Company?
A. No, sir; I was not. I went out of the council in May, 1884, and I bought my stock in December, 1884.
Q. Don't you know that you went out of office on the first of May, 1885, and not of May, 1884?
A. No, sir; I don't remember that.
Q. The record shows "April 17th, 1885, present."

Mr. GODDARD: What does the next meeting show?
Mr. DAWES: "Present."

A. That may be the case; my recollection was that I went out before I bought the stock. I may be mistaken in the date.
Q. Refresh your recollection and state whether or not you were not still president of the council when you purchased your stock in the Clay Center Water Co.
A. I guess I was, according to that.
Q. How much stock did you take in that company in December, 1884?
A. Five thousand dollars.
Q. How much on the dollar were you to pay for that stock?
A. Ten per cent.
Q. That is all the stock has cost you?
A. That is all it has cost any one—all it has cost me. I was asked to sell more of it at the same price, but ten cents on the dollar is all it has cost anybody at that time; it has cost more since.

95 Cross-examination by Mr. F. P. HARKNESS:

Q. Of whom did you purchase your stock?
A. I bought of John E. Bonebrake; at least I negotiated with him for it.
Q. How much is that stock purchase—the face value of it?
A. I believe it is one hundred dollars; one hundred dollars per share; yes, sir.
Q. How many shares did you purchase?
A. Fifty.
Q. If you know you may state how much was paid in on each share of stock by the stockholders of that company at the time you purchased your stock.
A. I don't know anything about it.
Q. What per cent. of it?
A. Oh, ten per cent. was paid before that.
Q. What was paid before or up to that time on the stock?
A. Well, I don't know anything about what was paid or what had been paid up to the time I bought mine.
Q. Don't you know what was paid per share on the stock at the time you bought yours?
A. Well, now, I don't understand you; whether what somebody else paid or what I paid.

Mr. GODDARD: The only proper evidence is the books of the company.

Q. You say you paid five hundred dollars for your stock?
A. Yes, sir.
Q. How did you pay it?
A. I paid it in three notes—6, 12, and 18 months.
Q. What was the amount of those notes?
A. Two of them one hundred and sixty-seven dollars and one one hundred and sixty-six would make the even amount.
96 Q. To whom were those notes made payable?
A. Drayton & Orton.
Q. Who were they?
A. Drayton & Orton were the contractors who built the works along with Mr. Bonebrake.

Mr. HARKNESS: We desire to offer these notes in evidence, with the endorsements on them.

Mr. DAWES: We shall object to them, as it is not cross-examination and as being immaterial, irrelevant, and incompetent, not tending to prove or disprove any of the issues in this case; also that the notes have not been sufficiently identified.

Q. Is that your signature?
A. Yes, sir.
Q. To each of those notes?
A. All three of them, sir; yes; those are the notes I gave for my stock.
Q. State whether or not they were given at the time they are dated.
A. That is the time they were given; at the time they are dated, December 24th, 1884 (1884).

Mr. HARKNESS:

"No. —. CLAY CENTER, KAN., *Dec.* 24, 1884.

"Six months after date I promise to pay to the order of Drake & Orton, at the Clay County bank, John Higginbotham, banker, Clay Center, Kan., the sum of one hundred and sixty-seven dollars, with interest from date until paid at the rate of eight per cent. per annum, for value received.

"$167.00. IRA J. FLOOD."

Stamped on the face thereof is the following:

"First National bank, 11545, Clay Center, Kansas;" also "The First National bank, Clay Center, Kansas. Paid Aug. 11, 1885."

97 Endorsed on the back thereof is the following:

"Paid to order. Sterling National bank. Drake & Orton;" also "Pay to the order of First National bank, for collection, for account of the Sterling National bank, Sterling, Illinois."

The second note:

"No. —. CLAY CENTER, KAN., *Dec.* 24, 1884.

"Twelve months after date I promise to pay to the order of Drake & Orton, at the Clay County bank, John Higginbotham, banker, Clay Center, Kan., the sum of one hundred and sixty-seven dollars, with interest from date until paid at the rate of eight per cent. per annum, for value received.

"$167.00. IRA A. FLOOD."

Stamped on the face thereof is the following:

"First National bank, 12432, Clay Center, Kansas;" and written across the face thereof is the following: "Paid Dec. 26, 1885. M. S. Tousey, cashier."

The same endorsements appear printed on the back as upon the former one.

The third note:

"No. —. CLAY CENTER, KANS., *Dec.* 24, 1884.

"Eighteen months after date I promise to pay to the order of Drake & Orton, at the Clay County bank, John Higginbotham, banker, Clay Center, Kan., the sum of one hundred and sixty-six dollars, with interest from date until paid at the rate of eight per cent. per annum, for value received.

"$166.00. IRA J. FLOOD."

Stamped on the face thereof is the following:

"First National bank, 15484, Clay Center, Kans.;" also
98 "First National bank, Clay Center, Kans. Paid June 26, 1886."

The same endorsement appears upon the back of this note as appears upon the two former notes.

A. A. GODDARD, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. State your name, age, and place of residence.

A. A. A. Goddard; 32 years old; residence, Clay Center, Kansas.

Q. How long have you resided in Clay Center?

A. Since 1879.

Q. What official position did you hold in the city of Clay Center in the years 1883 and 1884?

A. I was city clerk. I could not say that I was city clerk during all that time. I was city clerk about that time. I don't remember just how long I held the position. I held it during all the year 1884 and part of the year 1883.

Q. You held it during the time that this water-works question was pending before the council?

A. I did.

Q. During the year 1884 where was the regular council chambers of the city—their regular place for meeting?

A. At your office, over the Clay County bank.
Q. Was it at my office or was my office in the council chamber?
A. To that I will answer yes.
Q. I would ask you if you know whether or not the council had leased or hired a place to hold meetings in during the year 1884.
99 A. There was some arrangement by which you were to occupy the council chamber or the council were to occupy your office and the city was to pay the rent while you were city attorney. I do not remember what it was. I suppose the records of the council would be the best evidence on that.
Q. Where was that room—the council chambers—located?
A. It was the front room over the Clay County bank.
Q. On what street and on what side of the street?
A. On Lincoln avenue, on the north side.
Q. Where was the office of Harkness & Goddard at that time?
A. In the building known as the Grubs building.
Q. On what street?
A. Lincoln avenue.
Q. What side of the avenue?
A. On the south side.
Q. What room in that building did Harkness & Goddard occupy at that time?
A. We had two rooms toward the rear part of the building, on the second floor.
Q. Was not the main office the extreme rear room opening into the back yard or alley?
A. I think it was the third door back.
Q. The windows facing the south in the rear of the building?
A. Yes, sir.
Q. How far was that office of Harkness & Goddard from the council-room?
A. In the neighborhood of 200 or 250 feet.
Q. On the opposite side of the street?
A. On the opposite side of the street. It may have been a
100 trifle more than that; I am estimating it.
Q. I would ask you whether or not any of the meetings or pretended meetings of the council when they met for the pretended purpose of considering what is known as the water-works ordinance were held in Harkness & Goddard's office.
A. To that I can only say that when the subject was first mentioned here to-day my recollection was that none of the meetings were held there; still it is possible that one or two of those meetings were held in the office of Harkness & Goddard. If so, the meetings were adjourned from the council-room to the office of Harkness & Goddard for the reason that it was cold weather and we had a fire and lights at our office. When they were not held in the council-room there was some reason of that kind for it.
Q. Where was the meeting of January 8th, at which the ordinance was pretended to have been passed, held?

A. I cannot swear positively; but my belief is it was held at the city-council room. I am only testifying to my recollection, now.

Q. You are not positive about that?

A. I am not positive.

Q. Where was the meeting held at which the council undertook to authorize the mayor and clerk to execute a contract with John E. Bonebrake, and at which the contract was signed by the mayor and clerk January 23rd, 1884?

A. I do not know.

Q. You are a member of the Clay Center Water Company?

A. I am.

Q. Officer in the company?

A. I am.

Q. What office do you hold?

101 A. President.

Q. When did you become a member and stockholder in the Clay Center Water Company?

A. At the organization of the company, in December, 1884.

Q. Still city clerk at that time?

A. I was.

Q. I would ask you, then, if it is not a fact that that pretended contract between Bonebrake and the mayor and council was signed by Bonebrake and by the mayor and by the clerk on the table in the office of Harkness & Goddard on January 19th, immediately on the adjournment of the pretended meeting of the council.

A. I don't remember.

Q. Don't you remember that that meeting of the council was held between the hours of 5.30 and half past six of that day?

A. I am quite positive that such was not the fact.

Q. You are not positive as to the place the meeting was held?

A. No; I am not. My recollection is that the contract was signed in your office or the city-council room, but I would not swear to that positively; but I have some recollection of it being spread out on a table like this.

Q. Do you recollect this—that at that meeting at which the contract was signed that Mr. Bonebrake was present at that meeting?

A. I do.

Q. Don't you recollect the fact that he came in on what is commonly called the five o'clock passenger train on the Union Pacific railroad that evening?

A. I do not.

Q. And that he went away on what is commonly called the seven o'clock freight going south?

A. I do not; I don't think there was a 7.15 train at that time.

102 Q. Well, that he went away on the evening train?

A. I have no recollection as to that.

Q. Have you in your possession as president of the Clay Center Water Company the charter of the company?

A. I have not.

Q. Who is in possession of that charter?

A. Mr. D. A. Valentine.
Q. Where is Mr. D. A. Valentine now, if you know?
A. I only know by hearsay.
Q. Is he — present in Clay Center?
A. He is not.
Q. Where is he generally understood to be?
A. He is away on an excursion or pleasure trip.
Q. He is secretary of the company, is he?
A. He is.
Q. Who is acting secretary during his absence?
A. The superintendent, Mr. Flood, so far as anything is necessary to be done.
Q. And, as such acting secretary, is in possession of the books of the company?
A. I do not know.

Cross-examination by Mr. F. P. HARKNESS:

Q. I understand you to say that you do not recollect that any of the meetings of the city council at which business relating to the water works was transacted were held at the office of Harkness & Goddard. Is that correct?
A. I have no recollection that any of the meetings were held there.
Q. Have you any recollection of any of the meetings of the city council being held there?
103 A. I know that once or twice or three times during the cold weather of the winter the fire was out at the council-room and the council adjourned to the office of Harkness & Goddard for the reason that that office was warmed and lighted, after gathering at the city-council room and standing around there shivering.
Q. If there was any other reason for holding any meeting or meetings of the city council at the office of Harkness & Goddard during that period you may state it fully.
A. There was no other reason, unless it might have been that on one occasion the city-council room was occupied by Mr. Dawes for other business; but I think that the only reason was that the fire was out.
Q. Were any of the meetings of the council at which business was transacted relating to the water-works contract or the water-works ordinance or anything in connection therewith held in a secret manner or at a secret place or were there any efforts of secrecy of any kind, so far as you know, used in connection with such meetings?

Mr. DAWES: Objected to as not being cross-examination.

A. There was not. There was no concealment or attempted concealment or attempt to avoid publicity of any kind of the proceedings of the council in relation to the water works or any other business to be transacted. The doors were open to all and the matters under consideration were subjects of common talk.

Mr. DAWES: We move to strike out this latter part of the answer as not being responsive to the question asked; a mere voluntary statement of the witness.

Q. Who was city attorney at that time?
A. F. B. Dawes, Esq.
Q. Was Mr. Dawes practising attorney in this city at that time?

104 A. He was and had been for a long time prior thereto.

Q. Did he have any other law office during that period except a room occupied by the city council as a council chamber?
A. He did not.
Q. That is, he occupied that room as a law office in connection with his official position as city attorney?
A. He did.
Q. Do you recollect whether Mr. Dawes was present at the meeting at which the water-works ordinance was passed?
A. He was. The ordinance had been submitted to him for examination and approval at a prior meeting.
Q. If the meeting was held at the office of Harkness & Goddard Mr. Dawes was present there, was he?
A. He was and examined the contract before it was signed at the instance of the mayor and council.
Q. Then if that meeting was held at the office of Harkness & Goddard Mr. Dawes was present thereat?
A. He was.

J. M. FRANK, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. State your name, age, and place of residence.
A. J. M. Frank; Clay Center, Kansas; 38 years old.
Q. How long have you resided in Clay Center, Kansas?
A. Since 1874.
Q. I would ask you whether or not at any time prior to May 5th, 1885, you were the holder in your name of any stock in the Clay Center Water Company.

Mr. GODDARD: Objected to because the records of the water
105 company are the only proper evidence—they are the best evidence.

A. Yes, sir.
Q. How much stock did you hold?
A. 100 shares.
Q. What was the amount of those shares each?

Mr. GODDARD: Objected to for the same reason.

A. I don't remember. I think they were one-hundred-dollar shares. I don't remember whether they were ten-dollar shares or one-hundred-dollar shares.
Q. From whom did you obtain the stock?
A. From the secretary.

Q. Who was the secretary at that time?
A. Valentine.
Q. When did you obtain it?
A. Well, immediately after the organization of the company. I don't know exactly the date.
Q. At whose request, if any person's, did you obtain the stock?
A. Mr. Gifford's.
Q. Mr. C. E. Gifford?
A. Yes, sir.
Q. What official position in the city of Clay Center, Kansas, did Mr. C. E. Gifford hold at that time?
A. Mayor.
Q. State whether or not he stated how much stock he wanted you to obtain.
A. 100 shares.
Q. Who paid for the stock, if you know?
A. I don't know.
Q. State whether or not you paid anything for it.
106 A. I did not.
Q. What understanding, if any, was there between you and Mr. Gifford? And state fully on that subject as to his reasons for your purchasing stock and becoming the holder of it at that time.
A. Why, the reason given was that he was mayor of the city, and he couldn't hold stock; wouldn't be legal for him to hold stock.
—. Go on.
A. That is an answer to the question, isn't it?
Q. You were to take it and do what with it?
A. I was to take it and transfer it to him or his—whoever he wanted it transferred to.
Q. When?
A. Well, at any time.
Q. Did you so transfer it?
A. I transferred it in blank.
Q. At whose request?
A. Mr. Gifford's.
Q. When?
A. Oh, I should say probably 90 days after or 60—90 days after the organization of the company.
Q. Was it prior to May 5th, 1885, and while Mr. Gifford was still mayor?
A. Yes, sir.
Q. To whom did you deliver the stock when you transferred it?
A. Mr. Gifford.
Q. Mr. C. E. Gifford?
A. Yes, sir.
Q. Were you present at a meeting of the stockholders of the Clay Center Water Company, shortly after its organization, at which Mr. J. T. Campbell was also present, when yourself and Mr.
107 Campbell were solicited to take stock in the water-works company?
A. Yes, sir.

Q. State what, if anything, was said at that meeting by Mr. Bonebrake or other stockholders of the company concerning the original cost of the construction of the water works in Clay Center.

Mr. HARKNESS: We object to the question as being irrelevant, immaterial, incompetent, and hearsay.

Mr. GODDARD: The time of that is not shown.

Mr. DAWES: The prior question fixes it shortly after the organization of the company.

Mr. GODDARD: The water works were not constructed then.

A. I don't have any recollection of anything being said about the price.

Q. Was there anything said at that meeting, whenever it was held, as to the question as to whether or not there was a surplus remaining over from the sale of the bonds of the Clay Center Water Company, after defraying the expenses of the construction of the water works, by Mr. Bonebrake or any other member of the water company?

Mr. HARKNESS: We make objection on the same grounds as above, and on the further ground that it is not the best evidence. What was said is immaterial and hearsay, and the fact had better be shown by future testimony.

A. I didn't hear anything of the kind.

Q. Were you ever present at any other meeting when you and Mr. Campbell were solicited to take stock in the company?

A. Yes; I think we were.

Q. When?

A. I couldn't give the date; it was during the time of the
108 organization.

Q. At any of the meetings were you and Mr. Campbell *were* solicited to take stock in the company? I would ask you whether Mr. Bonebrake or any other member of the water company said anything in regard to the cost of the water-works construction, and as to whether or not a surplus remained over from the sale of the bonds after defraying the expenses of building the water works?

Mr. HARKNESS: We make the same objection as last before.

A. The only thing I can call to mind is what was said by Mr. Bonebrake, I think, that they would have to have fifteen thousand dollars at once; the balance of the money would be raised on the bonds.

Q. At the time of this conversation the water works were not yet completed?

A. No, sir; they hadn't begun building them; they hadn't begun putting them in at this meeting I speak of. The work hadn't been begun on the plant.

Q. It was after the organization of the company?

A. No; not after. It was during the organization of the water company. It hadn't been organized.

Q. How long after the organization was that meeting at which you were present?

A. Well, I cannot name the exact time, but I would say just a few days, if I remember correctly. We organized in Mr. Valentine's office, and then a night or two afterwards we had a meeting in Mr. Gifford's office.

Q. Was Mr. Ira A. Flood present at either of these meetings?

A. I couldn't state positively to that.

Q. State whether you held stock for any other person or at any other person's suggestion or request except C. E. Gifford.

109 A. No, sir.

Q. I would ask you whether or not, at the meeting of which you speak, during the organization of the Clay Center Water Company, at which you and Mr. Campbell were present, you and Mr. Campbell or one of you didn't make inquiry of Mr. Bonebrake as to what was to be done with the money arising from the sale of the bonds of the Clay Center Water Company?

Mr. GODDARD: We make the same objection to that. It is immaterial, irrelevant, incompetent, and hearsay.

A. Why, he remarked that those bonds were to be delivered and sold or transferred or something to the Holly Water Company and Drake & Orton; that it would take the proceeds of those bonds to pay for the works.

Q. Then, in connection with that, was there anything said as to what was to be done with the surplus, if any remained after paying for the works?

Mr. GODDARD: We make the same objection to that.

A. There wasn't anything said about the surplus at that time, any more than we thought there was a surplus and we wouldn't take any stock on that account.

Q. Was there anything said as to what was to become of the surplus, providing there was any, at any of the meetings at which yourself and Mr. Campbell were present?

A. No, sir; I don't know whether there was a surplus. We supposed there would be a surplus and we asked the question in that way.

Mr. GODDARD: We object to your stating what you suppose.

Q. Did you state then, in reply to what Mr. Bonebrake said, anything as to your reasons for not taking stock in the company?

Mr. GODDARD: We object. It is immaterial, irrelevant,
110 and incompetent.

Q. Yes; we did.

Q. What was it?

Mr. GODDARD: Same objection.

A. It was that we didn't consider that the plant would call for any such amount of money, and we supposed there would be a sur-

plus of bonds, and if there was we wanted our share of them if we paid for them.

Q. What reply did Mr. Bonebrake make, if any?

Mr. GODDARD: Same objection.

A. He replied that the home company wasn't to have any of those bonds.

Q. Did he say what was to become of it then?

A. No, sir; that is all he said.

Q. Did Mr. Bonebrake state anything further than what you have — in that conversation concerning the matters of the bonds and the sale of them and what was to be done with the money arising therefrom?

A. No, sir.

Cross-examination by Mr. F. P. HARKNESS:

Q. You say that you and J. C. Campbell were solicited by Mr. Bonebrake to take stock in the company which they were about to organize?

A. Yes, sir.

Q. Do you know whether or not it was offered to you at the same rates and on the same terms as it was offered to Mr. Goddard and Mr. Flood and Mr. Valentine and others?

A. I don't know anything about the rate. I can tell you what it was offered at. I don't know what others paid for it.

111 Q. What was it offered at?

A. Fifteen cents.

Mr. GODDARD: Are you sure about that?

A. Yes—that is, it was offered—the first payment was to be 12; that was the expectation, and it was the understanding that there was three more payments to be made right away, making it fifteen cents.

Mr. HARKNESS: That was the proposition Mr. Bonebrake made to you, was it?

A. Yes, sir.

Q. Then, after investigating the matter, you and Mr. Campbell concluded that it was not a good investment? *Q.* What business was Mr. Campbell in at the time?

A. I don't think he was in any, if I recollect right.

Q. Was there any other reason or objection made by you or Mr. Campbell for not taking the stock, except that you didn't consider it a good investment?

A. Yes, sir.

Q. Except as you stated—that you thought the works wouldn't cost as much as the bonds would amount to?

A. Well, do you want me to state my reasons?

A. I want you to answer the question, if you can.

A. Well, I don't know whether I can. The reasons—the only reasons—were that if the works were bonded for sixty thousand dollars and we were to pay fifteen per cent. for the stock in cash that

we would be paying more than the works would cost is the reason we would not take it, in our judgment.

Q. Then the reason was you didn't think it would be a good investment under those circumstances?

A. I didn't think it was, unless we could get part of the proceeds of the bonds.

112 Q. And it was your understanding that the entire proceeds of the bonds would go to Drake & Orton and the Holly Water Works Co.?

A. Yes, sir.

Q. And it was so stated to you by Mr. Bonebrake at that time?

A. Yes; that is the understanding I had at that time.

Q. Do you know whether or not the contract had already been let to Drake & Orton for the construction of the water works?

A. I could not answer positively to that, but I think it was, but I am not positive.

Q. In other words, the way you understood it and the way it was stated to you and Mr. Campbell was that Drake & Orton and the Holly Water Works Company would make all the money out of the enterprise that was to be made and the water works company would be left to hold the bag?

A. That wasn't stated, but that was the conclusion we came to.

Q. You never had had any experience, directly or indirectly, in the construction of water works under the Holly system or any other system, had you?

A. No, sir.

Q. Did you have any actual knowledge as to the cost of the construction of such works upon the plan proposed to be constructed in this city?

A. Well, nothing more than to make inquiries around. This thing was on top several days, and I kind of looked the thing up, and I made up my mind as I have stated.

Q. That is, your judgment was, after getting what information you could, that the works wouldn't cost as much as the amount of the proceeds of the bonds and fifteen thousand dollars additional, which was to be paid in by the company?

A. That was the conclusion we came to.

113 Q. Then your judgment was that the corporation or water works company after paying the sum of fifteen thousand dollars would simply acquire an ownership of these water works subject to an interest-bearing bonded indebtedness of sixty thousand dollars?

A. Yes; that was my understanding.

Redirect examination:

Q. Was there anything said by Mr. Bonebrake at the meeting to which you have heretofore referred as to the necessity of raising fifteen thousand dollars cash and for what purposes it was to be used?

Mr. HARKNESS: We make the same formal objection as before: It is irrelevant, immaterial, and incompetent and hearsay.

A. Why, it was stated by him, I think. I don't know who stated it, but it was stated at the meeting that this fifteen thousand dollars would have to be raised, because they would have to have this money to pay for labor.

Q. State whether or not it was stated at that meeting that it was to be used in building the building down here, putting in boilers and engines and placing the mains in the business part of town in the fall of 1884; that it would require that much.

Mr. HARKNESS: We make the same objection as before stated and for the additional reason that it is leading.

A. Yes; the statement was made that it would require that fifteen thousand dollars in order to get the plant going; would take that much in cash.

Recross-examination by Mr. F. P. HARKNESS:

Q. Will you state just exactly what was said by Mr. Bonebrake about this?

A. No, sir; I couldn't.

114 Q. Did he say that amount would fully pay for the plant and the mains, as stated by Mr. Dawes in his question, or that would have been necessary to pay for labor and incidentals in getting the works started?

A. He said that would be necessary in order to get the work done in time. It would be necessary to have that money at once.

Mr. DAWES: In order to get the work started?

A. Yes, sir.

F. B. DAWES, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. State your name and place of residence.

A. F. B. Dawes; residence, Clay Center, Kansas.

Q. How long have you been a resident of Clay Center, Kansas?

A. Between ten and eleven years.

Q. Do you remember a pretended meeting of the city council of Clay Center at which the members of the council pretended to pass what is commonly known as the "water works ordinance"?

A. I do.

Q. Where was that meeting held?

Mr. HARKNESS: We object to that on the ground that it is immaterial and not the best evidence.

A. It was held at the office of Harkness & Goddard, attorneys-at-law, on the south side of Lincoln avenue, city of Clay Center, Kansas.

Q. Were you present at that meeting?

A. I was.

Q. Where was the council chambers located at that time—the place of the meeting of the council?

115 A. In the front room upstairs of the building in which the Clay County bank was then and is now situated, on Lincoln avenue, on the north side of the same.

Q. Was Mr. A. A. Goddard, who was city clerk at that time, the Goddard mentioned in the firm name of Harkness & Goddard?

A. Yes, sir.

Q. Do you remember the pretended meeting of the council at which the members of the council present attempted to authorize the mayor and city clerk of the city to execute a pretended contract with J. E. Bonebrake concerning the construction of water works in the city of Clay Center?

A. I do.

Q. Where was that meeting held?

A. At the office of Harkness & Goddard.

Q. What was the reason, if any, for holding the meetings at that time at the office of Harkness & Goddard?

A. Now that I know of; no special reason.

Q. Was there anything at that time to prevent the meetings being held at the council chambers?

A. There was not.

Q. State whether or not the council met on that evening at the council chambers, and then adjou-ned to Harkness & Goddard's office.

A. They did not.

Cross-examination by Mr. F. P. HARKNESS:

Q. How old are you?

A. Thirty-two.

Q. At the times of which you speak, state what official position, if any, you held in this city.

116 A. City attorney.

Q. City attorney of the city of Clay Center, Kansas?

A. Yes, sir.

Q. State whether or not before the passage of the ordinance to which you have referred it was submitted to you as city attorney for your examination and inspection and approval or disapproval.

Mr. DAWES: Objected to as not being proper cross-examination and being immaterial and irrelevant.

A. It was.

Q. Did you examine it?

A. I did.

Q. Did you approve of it?

Mr. DAWES: Objected to as not being proper cross-examination and as being incompetent, irrelevant, and immaterial.

A. I did not in the shape it was.

Q. What suggestions did you make, if any, in regard to any alterations in the ordinance?

A. There were several suggestions made of minor importance at this particular meeting. The only suggestions that I remember now that I made there, I had written on the margin of the original ordinance as presented a proviso requiring the water company or John E. Bonebrake, his successors and assigns, instead of furnishing one fountain free in the city park, — provides for the furnishing of fountains in the city park, in court-house square, and any other public grounds of the city; also at another place on the margin requiring John E. Bonebrake, his successors and assigns, at the time of entering into the contract mentioned in the ordinance, to enter into a bond for fifty thousand dollars for the faithful performance of that contract. Those are all the suggestions I remember making at that meeting.

117 Q. Do you know of any reason why the first meeting which you have referred to as being held in the office of Harkness & Goddard was held at that place, if held there?

A. I know of no reason why it was held there, exeept as stated to me by Mr. Carson, the marshal, when he came to notify me where to go. His notice to me was to notify me to go to the office of Harkness & Goddard.

Q. Was that the first or the second meeting?

A. The first meeting that I spoke of; that is the meeting at which the ordinance was passed.

Q. After the passage of the ordinance was the contract which was afterwards signed by the officers of the city and J. E. Bonebrake submitted to you for your inspection and examination as city attorney?

A. The contract, my recollection is, was submitted to me at the time of holding the meeting of which I have spoken when the council met for the purpose of considering the matter of entering into that contract. I think it was submitted to me on that day— that evening. I know this: that before it was signed it was submitted to me. I know that positively, and I think it was on that day.

Q. State if you made any objections to the contract or the closing up of the same on the ground of any informality or irregularity in the proceedings which had been had prior to that time.

Mr. DAWES: Objected to as not being proper cross-examination and as being immaterial, irrelevant, and incompetent.

A. I did not. I examined the contract which embodied a copy of the water-works ordinance and concluded that the contract embodied everything that it was intended should be embodied under the provisions of the ordinance, and therefore made no objection.

118 Q. Did you inform the council at that time or at any time prior to the signing of the contract, at any of their meetings, special or otherwise, that anything had been informal or irregular?

A. I did not. I don't think the question was ever raised at all by anybody up to that time. All I know about it — that I was notified to be at the council meetings and would go.

—. So far as you know was there any secrecy or concealment employed or exercised by any one in connection with the holding of these two meetings or any other meetings relating to the water works?

Mr. DAWES: Objected to as not being cross-examination.

A. So far as my knowledge of any secrecy is concerned on my part I know of none, with the exceptions as I have stated heretofore. I will state in that connection that there was one meeting of the council when the question was before them that I did not receive any notice of the meeting. I think that was the one at which the ordinance was first introduced. I was not present; at all of the others I was present; received notice from the marshal and was there.

Q. Was there anything in connection with any of these meetings which at the time suggested or created any suspicion in your mind that any secrecy or concealment was being practiced by any one in connection with the water-works ordinance or contract?

Mr. DAWES: Objected to as not being cross-examination.

A. There was nothing to arouse my suspicions at that time.

Q. You say you were notified by the marshal of these meetings with one exception?

A. With one exception; yes, sir.

Q. You knew, did you not, the manner in which the mayor up to that time had been accustomed to call special meetings?

A. I don't recollect that I had any knowledge of his manner or custom of calling meetings. I don't think I was ever spoken
119 to in regard to the matter.

Q. Were you not present and heard the minutes read of these meetings which specified that they were held pursuant to the notice of the mayor which was set out in the minutes?

A. I resume I was. I was at the meetings and, I expect, heard the minutes read. I have no recollection of it, however, but there is not any doubt that I did because I was there.

Q. Did you not know about that time that the manner and method of calling special meetings of the council and of holding special meetings of the city council was irregular under the laws of the State?

A. No doubt, if my attention had been called to it I would have known.

Q. Did you not know at that time?

A. Yes.

Q. Then, why, as city attorney, did you not call the attention of the mayor and the city council to the fact that their special meetings were being irregularly held and not held and called in pursuance of the laws of this State?

Mr. DAWES: Objected to as not being cross-examination and as being incompetent, irrelevant, and immaterial.

A. The question was never asked me as to the legality of it, and

so far as that was concerned I do not think that I thought anything about it at the time. I have no recollection of the question being discussed at all.

Q. How long had you been city attorney prior to that time?

A. I have been city attorney since May 1st, 1882. I think I was elected in April; at the election in April, 1882, first, and then re-elected.

Q. And have occupied that position ever since?

120 A. Yes, sir.

Q. Either by election or appointment?

A. Either by election or appointment; yes, sir.

Redirect examination:

Q. At the time of the passage of the water-works ordinance heretofore referred to where was your office?

A. At the council chambers, on the north side of Lincoln avenue. The council had consented for me to occupy their rooms for my office.

Q. Where were you when the marshal notified you of the meeting of the council of January 8th at which said ordinance was pretended to have been passed?

A. At my office at the council chambers, Lincoln avenue.

Thereupon the said plaintiff, The Farmers' Loan and Trust Company, produced the following witnesses in the following order:

J. M. GRUBS, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Examined by Mr. A. A. GODDARD:)

Q. What is your name, age, residence, and occupation?

A. J. M. Grubs; residence, Clay Center; occupation, lumber business; age, thirty-eight.

Q. Are you the J. M. Grubs who was a member of the city council of the city of Clay Center, Kansas, during the years 1883 and 1884?

A. Yes, sir.

Q. Were you present at a meeting of the city council of the city of Clay Center during the fall of 1883, when J. E. Bonebrake

121 made a proposition to the city for the purpose of putting in water works?

A. Yes, sir.

Q. Were you present also at the meeting at which what was known as the "water-works ordinance" was passed?

A. Yes, sir.

Q. Where were the city council in the habit of holding their meetings about that time?

A. Well, over the Clay County bank; front room over the Clay County bank.

Q. State if you know where the meeting at which what was known as the water-works ordinance was passed was held.

A. Well, I think it was there, although I won't be positive. I remember of meeting up at your office, but I don't remember of meeting there after night. I remember of meeting there during the day, but possibly we might have met there some at night. I couldn't say positively about that, but I rather think it was——

Q. If any of the meetings of the city council were held at the office of Harkness & Goddard what was the reason of their being held there instead of at the regular council-room?

A. Well, I think the only meeting that I have any recollection of being held there was held in the forenoon, in the morning, I think, and we just decided the night before that we would meet there, and there was some small business in regard to locating hydrants, or something of that kind; I have forgotten just what it was. That is the only meeting I remember of at that place. There may have been others, but that is the only one I remember of.

Q. State if you know why any of these meetings that were held at the time the water-works proposition was under consideration should have been held at the office of Harkness & Goddard
122 instead of at the city-council rooms.

A. Well, I don't know what the reason was. I don't know; don't know as there was any reason.

Q. Were you present also at the meeting held by the city council at which the mayor and city clerk were authorized to enter into a contract with J. E. Bonebrake, his successors or assigns, relative to water works?

A. Well, I don't believe I missed a meeting. I think I was there. Of course I don't remember positive in regard to that deal, but I don't think I missed a meeting.

Q. Have you any other or further recollection as to where that meeting was held more than what you have already testified to in regard to the other meetings?

A. No, sir; I don't remember of any meeting being held except over the Clay County bank, except the one meeting I spoke of.

Q. You voted for the water-works ordinance, did you not?

Mr. DAWES: I object to that; the records will show how he voted.

A. Yes, sir.

Q. I will ask you if you were approached by any one who offered to give or gave you any consideration, either in money or other thing as consideration, for your vote for that proposition.

Mr. DAWES: To that we object—first, as being leading, and, second, that it is incompetent, irrelevant, and immaterial, not tending to prove or disprove any of the issues made up in this case.

A. No, sir.

Q. I will ask you if you were offered any stock in the Clay Center Water Company or in the corporation to be formed or offered anything else as a consideration for your vote on the water-works ordinance.

123 A. No, sir.

Q. If you have any knowledge of any other member of

the city council being offered anything for his support of that ordinance.

A. No, sir.

Q. State whether or not it was a fact that prior to the time of the passage of the water-works ordinance the proposition made by Mr. Bonebrake to the city of Clay Center was a matter of general public knowledge and discussion.

A. Yes, sir.

Q. I will ask you if it was not the fact that the ordinance and its provisions were a matter of general knowledge and discussion among the people of the city of Clay Center prior to the time of the making of the contract with Mr. Bonebrake.

A. Yes; it was generally talked.

Q. I will ask you if there was any concealment of the meetings of the city council at the time at which the ordinance and contract with Mr. Bonebrake were passed and made.

A. No, sir; none that I know of.

Q. I will ask you if you saw any evidence of fraud on the part of Mr. Bonebrake or on the part of any one else interested in the passage of the water-works ordinance and the execution of the water-works contract.

A. No, sir.

Q. State whether or not you saw any evidence of any desire for the concealment of the time or place of the meetings of the city council exhibited by any one at the meetings held while this proposition was under consideration.

A. No, sir.

Q. State whether or not citizens of Clay Center were present at the meetings of the city council held while the proposition
124 made by Mr. Bonebrake to the city of Clay Center was under consideration.

A. Well, yes; I think there were a number of people there that were not members of the city council.

Q. Now, at what meetings were people—were citizens present?

A. I think there were more or less present at every meeting they had. I don't remember of having a meeting when there were not some parties there that were not members of the council.

Q. Were these parties business men?

A. Well, business men generall-.

Q. Business men of the city of Clay Center?

A. Yes, sir.

Q. State whether or not a portion of the business men of the city of Clay Center were present at the meeting at which Mr. J. E. Bonebrake made the proposition to put in a system of water works if the city of Clay Center, in substance, conformed with the contract that was afterwards made.

A. Well, it is a pretty hard question to answer; I couldn't say. My recollection is that at every meeting we had there were more or less citizens there, but yet to any distinct recollection of a single meeting I couldn't say.

Q. Do you know what the public sentiment of the city was in

regard to the passage of the water-works ordinance and the making of the contract with Mr. J. E. Bonebrake as embodied in his proposition at or about the time of the passage of the water-works ordinance?

A. Well, I think that the majority of the business men were in favor of the proposition.

Q. You know what the sentiment of the people was, do you?

A. I think I do; yes, sir. I talked with different ones at different times in regard to it.

125 Q. State, if you know, what the opinion of the people generally throughout the city was in regard to that proposition.

A. I think it was favorable to the proposition.

Q. You may state whether or not the proposition was discussed in the newspapers and by the people generally at about that time.

Mr. DAWES: We object on the ground that it is not the best evidence. If it was discussed in the newspapers they will show for themselves.

A. Yes, sir.

Cross-examination by Mr. F. B. DAWES:

Q. What meeting was it that was held at Harkness & Goddard's office?

A. I remember a meeting there one forenoon after we had a meeting over the Clay County bank in the evening, but I do not remember what it was for or why it was held there.

Q. Was it concerning any matter in regard to the water works?

A. Yes, sir.

Q. What matter?

A. I don't remember that. I remember of the meeting being held there, and I remember of going with some other parties to look at some hydrants after the meeting was over with.

Q. Was that after the passage of the ordinance?

A. I couldn't tell you.

Q. What citizen or citizens were present at any of these meetings when the water-works question was being discussed by the city council? Can you name one?

A. I don't know that I can.

Q. Is it not a fact that the only meeting held by the city council for the purpose of considering the water-works question at

126 which the citizens of the town attended was prior to the time the proposition was submitted to vote thirty-five thousand dollars for the purpose of the city building the water works itself?

A. No; I think there was quite a crowd of people at that time, yet I think at the meetings we held there were more or less business men looking after it.

Q. Don't you know as a matter of fact that the reason why these meetings for considering the water-works proposition were all special sessions was that it was understood by the council that at any time when Mr. Bonebrake could be present here that he was to let Mr. Gifford know, and that Mr. Gifford, the mayor, was to call a

special meeting of the council whenever Mr. Bonebrake could be present?

A. No; I don't know that to be the case. I know that special meetings were called, and that is all I know about it.

Q. Don't you know as a fact that special meetings of the council were called only on such occasions as when Mr. Bonebrake would send word that he could be here, and that then the mayor would call these special sessions?

A. Yes; I know that they were called in that way.

Q. And don't you know that all the notices served upon you to attend these special meetings of the council were served on the day on which the meetings were held in the evening?

A. I don't know that that was always the case. I know it was sometimes. Mr. Bonebrake came in on the train in the evening and we would have a meeting.

Q. Is it not a fact that, as a general thing, these noti-es would be served after the train would come in on the evening, bringing Mr. Bonebrake here?

A. No; I don't know that it was generally the case; it was the case several times.

127 Q. Don't you know that that was the case on the evening of January 8th, at the time of the passage of the water-works ordinance?

A. No; I couldn't remember any particular occasion.

Q. Nor can you remember the name of any citizen that was present at any of these special meetings?

A. No; I don't remember well enough to say positively of any party that was present.

Q. Don't you remember that at the time this water-works ordinance was passed that the marshal notified you to meet at Harkness & Goddard's office?

A. No, sir; I don't remember.

Q. Don't you remember that he said the meeting would be held there; that the books were all there; that the balance of the council would be there and for you to appear at Harkness & Goddard's office?

A. No, sir; I don't remember any meeting, except the one, and very little about that.

Q. Do you remember a meeting of the council at which I suggested that in addition to requiring Mr. Bonebrake to enter into the contract with the city that it was to be embodied in that ordinance that he be required to enter into a fifty-thousand-dollar bond for the faithful performance of the contract that he was to enter into?

A. Yes; I remember.

Q. And don't you remember that that meeting was held in Harkness & Goddard's office, and don't you remember that Mr. Bonebrake, sitting over by the sofa, leaning against the sofa in Harkness & Goddar-'s office, arose immediately on the suggesting of that amount and objected to it and said if it was required he would abandon the proposition?

128 A. I remember all but the place; I don't remember that. I have not the least idea where we held that meeting. I remember the circumstances.

Q. Don't you remember that Harkness & Goddard at the southwest corner of their room had a small-sized writing table there and that Mr. Goddard occupied his seat at the east end of that little table?

A. No; I don't remember.

Q. And Mr. Bonebrake over against the safe?

Mr. GODDARD: Where was the safe?

Mr. DAWES: On the east side of the building, against the wall.

A. Well, sir, I don't remember the meeting—where the meeting was held. I remember the circumstances that you speak of in regard to what was said and the bond business, but I don't remember the place of the meeting.

Q. And you don't remember the meeting held on January 23rd, at which the resolution authorizing the mayor and clerk to sign the contract —; that the contract was signed immediately on the adjournment of the council meeting and signed on the table in Harkness & Goddard's office?

A. No; I don't remember.

Q. Have you any recollection at all as to where that meeting was held?

A. No; I have not.

Q. Don't you know that the meeting was hurried up and held at an earlier hour that evening because Mr. Bonebrake had to go away, and stated that he had to go away on the train going south?

A. I remember of him being hurried away at one time, but I don't remember at what meeting it was.

129 Q. You don't remember that that was the time the contract was signed?

A. No, sir; I don't remember what the meeting was about; I remember of his being hurried away at one time.

Q. Then you say that you have no knowledge at all as to where those two meetings were held?

A. No, sir; I hav-n't.

Q. If you have any knowledge or recollection of a meeting being held at Harkness & Goddard's office, it was one held in the morning?

A. Yes, sir.

Q. How many citizens did you hear talking about that waterworks proposition and expressing themselves as being in favor of it—of the ordinance being passed in the shape it was?

A. Well, I think it was generally discussed on the streets.

Q. Who did you hear talking about it?

A. Well, I heard Mr. Barnes talking about it for one.

Q. C. R. Barnes?

A. Yes, sir.

Q. When?

A. Well, about the time the ordinance was passed.

Q. Wasn't it while he was mayor?

A. No, sir; while he was mayor I wasn't in the city.

Q. You remember that there was one proposition submitted to the city by Mr. Bonebrake, don't you, before the voting on the prop--sition by the city to put in 24 hydrants instead of 40?

A. I guess, perhaps, that was before my time. I remember of their voting on a proposition.

Q. Don't you remember that while Mr. Barnes was yet mayor Mr. Bonebrake came here and talked of—submitted a prop-
130 osition for 24 hydrants?

A. I remember of his being here, but I don't remember the time.

Q. Wasn't that the time Barnes talked about it?

A. I heard him talk about it at that time, too?

Q. Do you say you heard him talking about this particular proposition at any other time?

A. Yes, sir.

Q. Can you name any other person?

A. Well, I remember hearing Mr. Carr talk about it.

Q. You and Mr. Carr were occupying the same store at that time in the drug business?

A. Yes, sir.

Q. Who else?

A. Well, I couldn't remember. I remember of parties being in there and it being discussed, but yet I couldn't name the parties.

Q. What paper said anything about this prior to the adoption of the ordinance?

A. Why, my idea is that all the papers in the town were talking about it.

Q. Can you name any particular item that was in any paper in regard to it?

A. No, sir; I cannot.

Q. Wasn't these articles in the newspapers after the ordinance was passed, stating what kind of an ordinance the council had passed on that subject, and did you ever see anything else in the papers about it?

A. Well, my idea was that the proposition was discussed in regard to Mr. Bonebrake coming here and noticed when he did come and why he was here.

Q. Do you remember of any item in any paper which ever purported to state what kind of an ordinance the council in-
131 tended to pass or the provisions of it until after it was passed?

A. No, sir; I don't remember anything.

Redirect examination by Mr. A. A. GODDARD:

Q. Where did Mr. Bonebrake reside at the time of this matter?

A. At Abilene, I believe.

Q. Whenever he had any business to transact with the council he had to come from there here?

A. Yes, sir.

Q. In regard to this one special meeting, you say that you re-

member of a meeting being held at the office of Harkness & Goddard at one time, or I understand you to say that it was agreed between the councilmen at the previous meeting that they would meet at Harkness & Goddard's office at the time they did?

A. My recollection is that it was when Mr. Bonebrake was here and stayed over night. We had a meeting at the council-room and agreed to meet the next morning at your office—Harkness & Goddard's office.

Q. You said you had no recollection of any other meeting being held there?

A. No, sir; I don't remember of any other.

Q. You think that if two meetings in succession had been held at the office of Harkness & Goddard you would have remembered it?

A. Well, I may not have remembered it. There is just one thing that makes me recall the meeting I do, and that is going out with some parties to look at hydrants after we went from the room.

Recross-examination by F. B. DAWES, Esq.:

Q. Don't you know that that wasn't a meeting of the council at all, but the members of the council merely agreed to meet there to look at those hydrants that had been appointed by the
132 mayor—agreed to meet Mr. Bonebrake next morning and go out and look at them?

A. No, I don't remember that. I remember simply of the meeting and the going out there.

Q. You were on a committee to locate those hydrants?

A. I believe I was.

Q. Was there anybody met there except Mr. Bonebrake, the mayor, and the committee to locate the hydrants that morning?

A. Well, I don't remember. It might have been that way and it might have been——

Q. It might have been just a meeting of the committee to locate hydrants to meet Mr. Bonebrake?

A. Yes; it might have been. I don't remember of any other business.

C. E. GIFFORD, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Examined by Mr. F. P. HARKNESS:)

Q. State your name, age, occupation, and residence.

A. My name is C. E. Gifford; merchant by occupation; 38 years old; have lived in Clay Center for about ten years.

Q. What official position did you occupy, if any, in the city of Clay Center during the years 1883 and 1884?

A. I was mayor of the town if that is the date.

Mr. DAWES: From May 1st, 1883, to May 1st, 1885.

A. I think that is the date.

Mr. HARKNESS: Were you present at a meeting of the city council

of the city of Clay Center at the time Mr. Bonebrake made his proposition to the city to construct water works for the city
133 of Clay Center?

A. I was present at all of them; I presume I was at that because it was during my administration, I know.

Q. I wanted to know if you recollected about the meeting and where it was held at which he made that proposition.

A. It was in the council chamber, I suppose.

Q. Do you recollect any meeting of the city council at which Mr. Bonebrake was present; at which there were present also a large number of the citizens of Clay Center?

A. Yes, sir.

Q. What meeting was it?

A. About the time the water works were first discussed here. I think probably it was at that same meeting, but I couldn't tell you the date.

Q. Did you hear the testimony of J. M. Frank this morning?

A. Yes, sir.

Q. Do you remember of delivering to J. M. Frank at any time any certificates of stock in the Clay Center Water Company?

A. Yes, sir; one certificate, I think, for a hundred shares.

Q. Do you know anything about when it was?

A. No; I don't.

Q. Why and for what purpose did you do this?

A. I delivered it to Mr. Frank at the request of Mr. J. E. Bonebrake, of Abilene.

Q. — if you recollect what you said to Mr. Frank at that time.

A. I don't recollect what I said to Mr. Frank. I went into his store—he was keeping over on the corner at that time—and handed him the certificate with some remarks. I don't know what I said to him—the stock that Mr. Bonebrake spoke of—and I was doing some little errands for Mr. Bonebrake at that time while he
134 was absent.

Q. Did you have any interest in that certificate of stock at that time?

A. No, sir.

Q. And what did you say, if anything, to Mr. Frank about your being mayor of the city, and therefore that you couldn't take stock in that corporation?

A. I don't think I said a thing to Mr. Frank about that in any way, shape, or manner. It would be out of my usual way of doing business to make any such remark as that. If it was a fact, I wouldn't say anything about it.

Q. Did you do anything towards assisting Mr. Bonebrake to have that stock taken?

A. Yes, sir; I did.

Q. What did you do in that connection?

A. I took Mr. Bonebrake around to probably 15 or 20 citizens in this town.

Q. During the time you were mayor of this city did you negotiate

with Mr. Bonebrake for any shares of stock in the water company or enter into any agreement with him to take any?

A. I did not.

Q. Did you during the time you were mayor of the city of Clay Center own any stock in the Clay Center Water Company?

A. I did not.

Q. Did you have any arrangements with J. E. Bonebrake during the time you were mayor to take any stock in the Clay Center Water Company after your term should expire or have any transferred to you?

A. I did not.

135 Q. You say that you went around with Mr. Bonebrake to assist him in interesting the citizens of this town in taking stock in that company. Did he give you or promise to give you any reward, remuneration, or compensation whatever for your services in that respect?

A. No, sir.

Q. State what reason, if any, induced you to interest yourself in that matter.

Mr. DAWES: Objected to as incompetent, immaterial, and irrelevant.

A. I was very much interested in the city council and the city generally in getting the water works here in town. It was generally decided that if we could put in this plan of water works it was the cheapest plan we could get. Mr. Bonebrake refused to do anything if the citizens did not have any faith in the matter and signify that they had faith in them and himself, and I used my own means, and what means I used was as a friend of Mr. Bonebrake to interest citizens in this town to take stock in the water works.

Q. Do you own any of the stock of that company now?

A. Yes, sir.

Q. Of whom did you procure it?

A. Of Drake & Orton.

Q. Who are they?

A. I understand they are the agents of the Holly Water Works Co. and the contract-s who either sublet from Mr. Bonebrake or took the contract from him. I don't remember. They are the parties who took the contract in this city.

Q. When did you buy it?

A. In the fall of 1885, I think, nearly the 1st of January; somewhere along about that time.

136 Q. First of January, 1886, do you mean?

A. Near that time, but it was in 1885.

Q. How many shares of stock did you purchase of them?

A. I purchased 200 shares of stock. Par value was twenty thousand dollars.

Q. Did you at any time own any stock of the water works company except that amount you have now named?

A. No, sir.

Q. What, if anything, did you pay for the stock?

A. I paid two thousand dollars for it at that time—at the time I got it. I have paid more since that time.

Q. State whether or not that was the going price of the stock at that time.

A. Well, I think it was either 10 or 12 per cent., quoted at. I bought mine at ten per cent.

Q. Mr. Frank said something about a meeting of the water works company about the time of its organization at your office. What, if anything, do you know about that meeting?

A. The facts of the case of that was at that time Mr. Barnes' mill burned down in the spring, and I had a private office on the south side that I had rented to Mr. Barnes to keep his books and papers in, and Mr. Bonebrake rented with Mr. Barnes, and that meeting was held in that office and not in my office at all.

Q. It was an office which you had rented to Mr. C. R. Barnes for his business in rebuilding the elevator?

A. Yes, sir, and I had nothing to do with it. They didn't go through my office and I wasn't there.

Q. Do you know whether or not prior to the passage of the water-works ordinance, so called, and the entering into the water-works contract between the city of Clay Center and J. E. Bonebrake any publicity was given to the proposition which was made by Mr. Bonebrake and which was pending before the city council? And, if so, state what you know about it.

A. Well, I know it was the general talk on the streets that there was such an ordinance pending in the council, and there was nothing private about it that I know of. A week before the ordinance was passed or before the contract was signed, I am not sure which, there was forty or fifty copies of the ordinances of Salina and Abilene sent here to me and I distributed them up and down the streets, so the people of the city would know what they were talking about, and in my office citizens of the town were talking about it.

Q. State whether or not the Salina and Abilene ordinances were identically the same with the Clay Center ordinance or the proposition presented by Mr. Bonebrake to the city of Clay Center.

Mr. Stevens: Objected to as not being the best evidence; that the ordinances of Salina and Abilene are the best evidence as to whether they are the same as the one passed by the city council of Clay Center.

A. To the best of my knowledge and belief the ordinances are identical with the exception of the change in the name of the place.

Q. How many of these printed ordinances, propositions, or contracts, whatever you may call them, did you distribute in the city of Clay Center prior to the execution of this contract?

A. I distributed over 50 of them. I don't know how many, exactly.

Q. Do you recollect where the meeting of the city council was held on the 9th day of January, 1906? I believe it was at which

the water-works ordinance was passed by the council of the city of Clay Center.

138 A. No, sir; I do not. I would like to explain that.

Q. Well, you may explain all that you desire to.

A. There was two meetings held about that same time, I understand; one on the 8th and one on the 23rd of January. One of these meetings was held at the office of Harkness & Goddard, but which one I am unable to say.

Q. Do you recollect what business was transacted at that meeting?

A. Which one?

Q. At the one held at the office of Harkness & Goddard.

A. No, sir; I say I am unable to state.

Q. Then, as I understand you, either the meeting held on the 8th of January or on the 23rd of January, 1884, was held at the office of Harkness & Goddard?

A. That is what I think.

Q. And the other was held where?

A. At the council chamber.

Q. State, if you know, why that meeting was held at the office of Harkness & Goddard.

A. There was no other reason that the meeting should be held at the office of Harkness & Goddard. One might have been that the office was locked and the other that there was no fire there, and a few of the councilmen, finding no fire there or the office being locked up, would naturally go to the office of the city clerk.

Q. Do you know of any such circumstance as that having occurred?

A. Yes, sir; several times.

Q. You recollect times when the council found the office of Mr. Dawes locked up when they desired to meet?

A. Yes, sir.

139 Q. And also at other times when there was no fire in his office?

A. Yes, sir.

Q. And rather than build a fire they would leave?

A. Rather than build a fire we would adjourn over to the office of the city clerk, where there was always a base-burner.

Q. Where was the office of the city clerk at that time?

A. In the office of Harkness & Goddard.

Q. Then, as I understand you, one of those two meetings of January 8th and January 23rd was held at the council chamber or the city attorney's office and the other at the city clerk's office, which was kept at the office of Harkness & Goddard?

A. To the best of my knowledge and belief that is the fact.

Q. State if Mr. Bonebrake or any other person used any means or any improper means to induce you to use your influence with the council or with the citizens of Clay Center to pass the water-works ordinance or enter into that contract which was entered into with Mr. Bonebrake.

Mr. Dawes: We object to the form of the question. It calls for

Mr. DAWES: Objected to as being incompetent, irrelevant, and immaterial.

A. No, sir; never received any dividend.

Q. Did you ever receive, directly or indirectly, any of the proceeds of the bonds which were issued by the Clay Center Water Company?

A. No, sir.

Q. To whom did the proceeds of those bonds—sixty thousand dollars in bonds—go to?

A. I don't know. I wasn't a member of the company when the bonds were disposed of—not a member of that company, I think, for a year or a year and a half after they were disposed of.

Q. Have you, directly or indirectly, in any way received any remuneration, compensation, or reward for the investment you have made in that company or for the stock which you hold in that company?

A. No, sir; I have not.

Q. Have you ever received or were you ever offered any remuneration, compensation, or reward as mayor or otherwise for anything you may have done towards securing the passage of the water-works ordinance or the consummation of the water-works contract with J. W. Bonebrake and his assigns in any way whatever?

182 A. I think I am too well known to answer that question.

Q. What is that?

A. I have not; certainly not. I haven't in any way, shape, or manner.

Cross-examination by Mr. F. B. DAWES:

Q. What did you say to Frank to induce him to take stock?

A. I didn't induce him to take stock.

Q. What did you say to him?

A. I took the stock up to him at the request of Mr. Bonebrake, and turned it over to him.

Q. You heard his testimony in regard to your requesting him to take stock in the company?

A. Well, he is mistaken.

Q. You remember the meeting of the parties at the time of the organization of the water works company. Did you see Mr. Frank?

A. No; I don't remember much about the meeting.

Q. The one at which Mr. J. T. Campbell was present?

A. No; I don't think I was there. That was held in this office that I speak of next to mine.

Q. Don't you remember of Mr. Frank refusing to take stock in the company unless he was to come in for a share of the division of the spoils, the surplus remaining over after paying the expenses of building the water works, the moneys arising from the sale of the bonds, and that after his refusal to take stock unless there was an arrangement of that kind made that you said to him, Here; you have got to take hold of my stock, anyhow; I can't hold it while I am mayor; you have got to take hold of it for me now?

A. No, sir. I never said anything to Mr. Frank in any shape or manner or knew anything about this meeting or about this stock until he spoke about it this forenoon.

Q. Who paid for the stock that he held?

A. I don't know.

Q. Who did he finally deliver it to?

A. I don't know that.

Q. Didn't he give it to you?

A. He might have or he might not. I don't know.

Q. Was it not understood to block, just as he says?

A. I don't know that.

Q. If he gave it to you what did you do with it?

A. If he gave it to me I probably returned it to Mr. Bonebrake.

Q. Where was Mr. Bonebrake at that time?

A. I don't know, but if I got the stock back from Mr. Frank I haven't the slightest recollection of that.

Q. What did he do with it?

A. I don't know that.

Q. You got the same stock finally?

A. I don't know. the books will show that.

Q. You got a hundred shares?

A. I have 200 shares.

Q. You don't know whether that stock was paid for at the time or not, that was delivered to Mr. Frank?

A. I do not.

Q. Did Mr. Bonebrake tell you why he wanted you to take it down to Mr. Frank?

A. Yes, sir.

Q. What was it?

A. Mr. Bonebrake wasn't in town at the time I gave it to Mr. Frank, but he asked me to hand it to him, as the company that was to be formed was composed of five members, and I told him I would do it, and I did it for him.

Q. All you did in regard to getting the stock taken was to take Mr. Frank around and introduce the subject to different citizens of the town."

A. I introduced him to several; yes, sir.

Q. "Speaking of where the council meetings were held, and, perhaps the council chambers were locked up, don't you know, as a fact, that Mr. Carson, the city marshal, carried a key to that council-room."

A. He was supposed to; yes, sir.

Q. And it was his habit and custom, as he always did, on the evening of the council meetings to make fires there and light up?

A. That was his business.

Q. Did you ever know of his failing to do that while marshal?

A. Yes, sir.

Q. When."

A. I don't know any particular time; he did several times.

Q. Did he fail to make a fire there January 8th?

A. It was one of those two evenings.

Q. And you don't know which one it was?

A. No, sir.

Q. And you are not positive but what they were both held in Harkness & Goddard's office?

A. No, sir.

Q. And not positive whether the meetings of January 8th and January 23rd weren't both held in Harkness & Goddard's office?

A. Yes, sir.

Q. Why do you say that?

145 A. Because I am positive of one meeting held there.

Q. Is there any particular thing that fixes it in your mind, any circumstances that fixes it on your mind?

A. It was there. I know that.

Q. But which meeting, what meeting was held there you don't know?

A. No, sir.

Q. Do you remember of any meeting being held there in the morning?

A. No, sir.

Q. You heard Mr. Grubs' testimony?

A. Yes, sir.

Q. Do you remember any such meeting of the city council as he referred to in his testimony?

A. I think I can explain that.

Q. Well, just do you remember of any such meeting of the city council as a council?

A. No, sir.

Q. Was it not just a committee meeting of the council appointed by the council to locate hydrants that was to meet there?

A. I think it was. That is my idea. I think I wasn't present.

Q. They agreed the night before that they would meet Mr. Bonebrake at Mr. Goddard's office to locate hydrants?

A. I was not present at that meeting. I didn't pay any attention to that. That was their business.

Q. You think it was just a few chronic kickers that were kicking against the passage of that ordinance?

A. Yes; that was my idea about it.

Q. Don't you know that ever since that time what the chronic kickers have commonly dubbed the water-works steal has

146 entered into every city campaign that we have had here?

A. No, sir.

Q. Don't you know that independent papers have been started and run during political campaigns since that time on that issue?

A. I don't know anything of the kind; no, sir; I do not.

Q. You never heard it talked during elections here since?

A. Oh, yes.

Q. And is it not a fact that every time councilmen are to elect it is the general talk of the people trying to find out whether they are water-works men or not?

Mr. GODDARD: We object to that and all of this as immaterial.

A. I presume that it is an issue.

Q. Is it not a fact that those who are suspected as being in sympathy with the water works have been snowed under by the voters at the polls?

A. No, sir; I don't understand it that way.

Q. You understood it that way at the last spring election, didn't you? Don't you know as a matter of fact that at the city election in 1887 that the main fight in the city was made on "water works" or "not water works" between Mr. Vincent and Mr. Billings?

A. I didn't understand it; no, sir.

Q. Didn't you hear it talked on the streets?

A. I was away then.

Q. And don't you know that there was an independent paper started here by Mr. Vincent on that question?

A. I don't know as I ever read it; I was away then.

Q. And don't you know that Mr. Billings, in order to make his election in any way certain, had to come out and deny that
147 he was in sympathy with the water works, and that he did come out with a card?

Mr. Gotshall: We object to this as immaterial and object to all of this.

A. No, sir.

Q. You know as a matter of fact that pretty soon after the passage of the water-works ordinance the council became anti-water works, don't you?

A. No, sir.

Q. You didn't understand it that way?

A. I don't know it that way.

Q. It is that way now, is it not?

A. I don't know; I hav-n't attended a meeting of the city council for over a year.

Mr. Harkness: As a matter of fact, Mr. Vincent was not elected, was he?

A. I don't know that, even.

Mr. Dawes: When did you say you got your stock?

A. In the fall of 1885, either in October or December; the stock books will show that; one of those months.

L. J. Warren, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Examined by Mr. F. P. Harkness:)

Q. What is your name, age, and occupation?

A. My name is L. J. Warren; age, 36; occupation, physician.

Q. How long have you lived in the city of Clay Center?

A. Since 1880, June.

Q. What official position, if any, did you occupy in the
148 city of Clay Center during the years 1883 and 1884?

A. Member of the city council.

Q. Were you present as a member of the city council at the time J. E. Bonebrake, of Abilene, made a proposition to this city to construct water works for this city?

A. I was.

Q. Where was that meeting held?

A. Well, we had several meetings. You mean the meeting of the city council?

Q. Meeting of the city council at the time Mr. Bonebrake made that proposition.

A. I think that was in Mr. Goddard's office. There was one meeting in my office of the committee, I remember, to arrange the contract.

Q. How many meetings do you recollect being held in the office of Mr. Goddard, the city clerk?

A. I think there were two—one or two; I don't know as I remember of but one.

Q. Do you remember what business was transacted at that meeting?

A. Discussion of the water works.

Q. Do you know why it was held there?

A. Why, simply because it was more convenient, I suppose. The room was warm, or something of that kind. It was cold weather at that time.

Q. As a matter of fact the city clerk kept a hard-coal burner during that winter, didn't he; or what is your recollection about that?

A. I don't remember. It was cold weather and his office was warm, I suppose, is the only reason I knew at the time, if I
149 had known at the time.

Q. Were you present at the meeting at which the ordinance was passed?

A. I was.

Q. Have you any distinct recollection as to where that meeting was held?

A. That was either in the city-council room or in Mr. Goddard's office. I think that was in the city-council room, but I would not be positive about that.

Q. Were you present at the meeting of the city council when the contract was authorized to be signed by the mayor and clerk of the city and was, in fact, signed by the mayor and clerk and by Mr. Bonebrake?

A. I don't remember about that. I don't recall any circumstances connected with it.

Q. Well, if there is anything that you can recall which enables you to believe or leads you to believe that the meeting at which the ordinance was passed was held in the council chambers you may state what it is or was.

A. Well, I don't remember positively nothing to warrant me in saying positively the location of that meeting. I remember being present.

Q. Was that a secret meeting of the city council?

A. No, sir; I wasn't present at any secret meeting that I know of. They were all open.

Q. Did the council hold any secret meeting or in any secret or unusual place during the consideration of that proposition?

A. No, sir; not to my knowledge.

Q. Do you recollect any meeting of the city council when that proposition was under consideration when there was quite a large number of citizens of the town present? And, if so, state what

150 meeting it was as nearly as you can remember.

A. I think there was some present at both of those meetings it was passed.

Q. Were there at the time the proposition was made?

A. At the time the proposition was made, as I recollect, I think those meetings were here, but the last one—I am not so positive about that.

Q. Was where?

A. Was in Mr. Goddard's office. The last one, I am not so positive about that; I think the first one was.

Q. Do you know whether or not the fact that Mr. Bonebrake had made a proposition to the city council and that the city council had the same under consideration was of public notoriety in this city or otherwise?

A. Yes, sir; it was.

Q. Do you know what the public sentiment was generally with reference to the proposition and to the acceptance of it?

A. I heard a great deal of talk about it at the time; a great many talked with me about the matter, some *pro* and *con.*, as usual. I think a large majority of the citizens were in favor of the contract at that time; they so expressed it to me.

Q. Did you ever own any stock in the water works company?

A. I did not happen to be one of the members.

Q. Did any one ever offer you any stock?

A. No, sir.

Q. Did any one ever offer you any reward, remuneration, money, stock, or otherwise for your support of that proposition?

A. No, sir; nor broached the subject.

Q. No one ever broached the subject to you?

A. No, sir.

151 Q. Do you know of anybody else being approached by any person with any promise of any reward and remuneration or compensation whatever?

A. I do not.

Q. Do you know of any underhand methods of any kind being employed or used by any member of the council or other person to secure a passage of that ordinance and the signing of that contract?

A. I do not.

Q. Do you know of any secrecy or concealment being used in any way by any person in connection with the passage of that ordinance or the entering into of that contract?

A. Not to my knowledge.

Q. Do you recollect ever having seen any of the copies of Mr. Bonebrake's proposition or the ordinance proposed by him, either before the passing of the ordinance by the city council or before the signing of the contract?

A. Do you mean printed copies?

Q. Printed copies; yes, sir.

A. No, sir; I never saw any.

Q. You don't recollect of seeing them?

A. No, sir; I do not.

Q. Do you recollect the time Mr. Bonebrake made the proposition of having printed copies of the Abilene or Salina ordinances?

A. Yes, sir.

Q. Was that the same or similar to the proposition he made to this city?

A. Same proposition—practically the same. It wasn't our ordinance, though.

Q. But was it not the one that was afterwards adopted by the city of Clay Center and passed?

152 A. Well, it was about the same proposition; the same proposition as far as terms were concerned, I think.

Q. Of course different names were substituted?

A. Yes, sir.

Cross-examination by F. B. DAWES, Esq.:

Q. At this meeting of January 8th, do you remember where the city marshal told you to go to the council meeting that evening when he notified you of the special meeting?

A. What meeting was that? I don't remember dates.

Q. The meeting at which the ordinance was passed, January 8th.

A. Why, we were notified to meet at Mr. Goddard's office.

Q. Do you remember the fact of an amendment to the ordinance being suggested by myself and read by me there at that council meeting requiring Mr. Bonebrake to enter into a bond of fifty thousand dollars for the faithful performance of the contract?

A. Yes, sir. I think there was some mentioned at one of the meetings. I don't remember whether that was the one.

Q. Do you remember at that time Mr. Bonebrake stating to the council if they required that kind of a bond that he wouldn't take hold of it at all?

A. I don't remember that.

Q. You remember the fact of that matter coming up?

A. I remember the fact of the business coming up.

Q. Was not that at the meeting at which the ordinance was finally passed?

A. I wouldn't swear positively whether it was that or the previous meeting.

Q. And you don't recollect what Mr. Bonebrake said when

153 that was suggested?

A. No, sir, I do not.

Q. But you do recollect of the meeting at which it was passed?
A. The ordinance?
Q. Yes, sir.
A. Yes, sir.
Q. Was that held in Harkness & Goddard's office?
A. As I stated, I think it was in his office; I wouldn't be positive.
Q. You have no recollection concerning the meeting held on January 23rd, at which the contract was signed?
A. No, sir; I have not.
Q. Any recollection of having any notice served on you to attend that meeting?
A. I couldn't say; it is so far back. Sometimes I was in the country and it was impossible to serve notice on me for a meeting.
Q. Do you know where you were at the time that meeting was held on January 23rd?
A. No, sir; I do not; I can tell by referring to my books where I was that day.

STATE OF KANSAS, } ss:
County of Clay, }

I, a notary public within and for the county of Clay, in the State of Kansas, do hereby certify that —— —— were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by J. D. Smith in presence of the witnesses and in my presence and taken at the time
154 and place specified in the annexed stipulation, and that I am not a relative, counsel, or attorney of either party or otherwise interested in the event of this action or proceeding.

[SEAL.] Witness my hand and notarial seal, at Clay Center, in the said county, this 26th day of May, A. D. 1888.

H'Y W. STACKPOLE,
Notary Public.

My commission expires 10, 4, 1890.

Endorsed: No. 6012. Filed Aug. 8th, 1888. A. S. Thomas, clerk.

155 CITY OF CLAY CENTER, KANSAS, *May 8th*, 1876.

At a special public meeting of the city council of the city of Clay Center held at the office of the police judge.

Those present: Allen Wilson, mayor; M. R. Mudge, J. M. Frank, G. Kuhnle, E. W. Newell, and G. H. Fullington, councilmen; James Plant, city marshal, and E. P. Huston, city clerk.

The president of the council, H. G. Fullington, not beong present, the council was called to order by the mayor.

The minutes of the previous meeting were read, corrected, and approved.

There being no further business, on motion, the council adjourned to meet Mojday evening, May 16th, 1876.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of City Council.

MAY 18TH, 1876.

At a special public meeting of the city council of the city of Clay Center, Kans., held at the office of the police judge of said city May 18th, 1876.

Those present: A. Wilson, mayor; G. Kuhnle, G. H. Fullington, J. M. Frank, E. W. Newell, councilmen; James Plant, marshall; C. M. Kellogg, city attorney; E. P. Huston, clerk.

The council was called to order by G. H. Fullington, president of council.

Minutes of the previous meeting were read and approved.

There beong no further business, on motion, the council adjourned to meet on Monday, Jan- 5th, 1876.

Minutes of Council.

JUNE 19TH, 1876.

At a special public meeting of the city council of the city of Clay Center, Kansas, held in the office of the police judge of said city June 19th, 1876, there *was* present Allen Wilson, mayor; G. H. Fullington, M. R. Mudge, E. W. Newell, J. M. Frank, councilmen; James Plant, marshall, and E. P. Huston, clerk; absent, G. Kuhnle, councilman.

156 The council was called to order by A. Wilson, mayor.

No further business coming before the council, on motion, adjourned to meet in regular session Monday evening, July 3rd, 1876.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of the Council.

JULY 24, 1876.

At a public meeting of the council of the city of Clay Center, Kansas, held in the office of the county clerk Monday evening, July 24, 1876, there *was* present Allen Wilson, mayor; G. H. Fullington, E. W. Newell, M. R. Mudge, councilmen; James Plant, marshall; J. W. Miller, police judge, and E. P. Huston, clerk; absent, J. M. Frank and G. Kuhnle, councilman.

The council was called to order by the mayor.

Minutes of July 3rd, 1876, were read and approved.

There appearing to be no further business before the council at this meeting, on motion, adjourned to meet on Tuesday evening, Jan. 3rd, 1877.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of the City Council.

JAN. 10TH, 1877.

At a special meeting of the city council of the city of Clay Center publically held in the office of the county clerk on the 10th day of January, 1877, there *was* present A. Wilson, mayor; G. H. Fullington, J. M. Frank, M. R. Mudge, and E. W. Newell, councilmen;

James Plant, marshall, and E. P. Huston, clerk; absent, G. Kuhnle, councilman.

Council was called to order by mayor.

Minutes of December 4th were read and approved.

There being no further business, on motion council adjourned to meet at next regular meeting.

Attest: E. P. HUSTON, *City Clerk.*

157 *Minutes of City Council.*

FEBRUARY 12, 187–.

At a special meeting of the city council of the city of Clay Center, Kansas, publically held in the office of the police judge of said city on the 12th day of February, 1877, there *was* present Allen Wilson, mayor; G. H. Fullington, G. Kuhnle, E. W. Newell, J. M. Frank, A. Thompson, marshall; and E. P. Huston, clerk.

Mr. Mudge came in during the session.

The council was called to order by *by* Allen Wilson, mayor.

Minutes of January 12th were read and approved.

There being no further business at this meeting, on motion, council adjourned till next regular meeting.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of City Council.

MARCH 13, 1877.

At a special meeting of the city council of the city of Clay Center publicaly held in the office of the police judge of said city on the 13th day of March, 1877, there *was* present Allen Wilson, mayor; M. R. Mudge, E. W. Newell, and J. M. Frank, councilmen; James Plant, marshall; W. H. Wyatt, city attorney, and E. P. Huston, city clerk; absent, G. Kuhnle and G. H. Fullington, councilmen.

The council was called to order by Allen Wilson, mayor.

Minutes of Feb. 12th were read and approved.

A motion was then made and carried to adjourn until the next regular meeting.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of City Council.

APRIL 4, 1877.

At a special meeting of the council of the city of Clay Center, Kansas, publicly held in the office of the police judge of said city on Wednesday evening, April 4th, 1877, there were present Allen Wilson, mayor; J. M. Frank, M. R. Mudge, and E. W. Newell, councilmen; James Plant, marshal, and E. P. Huston, city clerk; absent, G. Kuhnle and G. H. Fullington, councilmen.

The council was called to order by Allen Wilson, mayor.

Minutes of March 13th were read and approved.

158 There being no further business, on motion, the council adjourned to meet Monday evening, April 16th, 1877.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of Council.

APRIL 16, 1877.

At a special meeting of the city council of the city of Clay Center, Kansas, publicly held in the office of the county clerk April 16th, 1877, there *was* present A. Wilson, mayor; G. H. Fullington, M. R. Mudge, E. W. Newell, councilmen; James Plant, marshal*l*, and E. P. Huston, clerk; absent, J. M. Frank and G. Kuhnle, councilmen.

Council was called to order by A. Wilson, mayor.

Minutes of April 4th were read and approved.

On motion, adjourned to meet at 8 o'clock this evening, April 16th, 1877, at office of police judge.

Attest: E. P. HUSTON, *City Clerk.*

Minutes of City Council.

APRIL 17TH, 1877.

At a special meeting of the city council of the city of Clay Center publicly held in the office of the police judge of said city on the 7th day of April, 1877, there *was* present A. Wilson, mayor; G. H. Fullington, J. M. Frank, G. Kuhnle, —; James Plant, marshal*l*; E. H. Wyatt, city attorney, and E. P. Huston, city clerk.

Council was called to order by A. Wilson, mayor.

Minutes of April 16th read and approved.

There being no further business before the council, on motion, the old council adjourned *sine die.*

Attest: E. P. HUSTON, *City Clerk.*

Minutes of the City Council.

CLAY CENTER, KANSAS, *April 18th*, 1877.

At a special meeting of the city council *and* newly elected mayor, M. H. Ristine, and Councilmen John Higinbotham, Sr., J. D. Spicer, J. A. Dittmer, G. M. Stratton, and J. F. Ryerson, being present and having been duly qualified, took their respective positions.

159 The council was called to order by Mayor M. H. Ristine and the minutes of April 17th, 1877, were read and approved.

There being no further business, on motion, the city council adjourned to meet Monday evening, April 23rd, 1877, at 8 o'clock p. m.

Attest: E. H. WYATT,
City Clerk pro Tem.

Minutes of City Council Proceedings.

STATE OF KANSAS, CITY OF CLAY CENTER, *April 30th*, 1877.

Council met in called session in office of police judge and was called to order by mayor at 8 o'clock p. m.

The minutes of the previous meeting of April 23, 1877, were read and approved.

On motion, adjourned to meet in regular session Monday, May 7th, at 7½ p. m.

Attest: C. C. COLEMAN, *City Clerk.*

Request for Special Meeting.

CLAY CENTER, *May* 31, '77.

Honbl. mayor, Clay Center:

We, the undersigned councilmen of the city, request your honor to call a special meeting of the city council this evening at 8 o'clock to take action in regard to the purchase of fire apparatus and any other business that may come before the council.

Respectfully yours,

J. F. RYERSON.
J. A. DITMAR.
G. M. STRATTON.
J. D. SPICER.

In obedience to a call made in compliance with the above request the council met in the council-room this May 31, 1877.

Present: Mayor and all councilmen except Mr. Higinbotham.

On motion and second, adjourned *sine die*.

Attest: C. C. COLEMAN, *City Clerk*.

Called Meeting, July 10, 1877.

160 CLAY CENTER, KAS., *July* 10, 1877.

To the marshall of the city of Clay Center, Greeting:

You are hereby commanded to notify the councilmen of said city that there will be a special meeting of said council at the usual place of meeting at 8 o'clock p. m., July 10th, 1877, for the purpose of considering bills against city and hearing report of ordinance committee.

JOHN H. PINKERTON, *Mayor*.

Council met at time and place designated in said call.

Present: J. F. Ryerson, G. M. Stratton, and J. D. Spicer, councilmen, and J. H. Pinkerton, mayor.

On motion and second, adjourned *sine die*.

Attest: C. C. COLEMAN, *Clerk*.

Called Meeting.

CLAY CENTER, KANSAS, *July* 11*th*, 1877.

To the marshall of the city of Clay Center, Greeting:

You are hereby commanded to notify the councilmen of said city that there will be a special meeting of said council at their usual place of meeting at 8 o'clock p. m., July 12th, 1877, for the purpose of considering bills against the city, and to consider the ordinance of the city as per contract claimed by Messrs. Kellogg and Higinbotham, and to take into consideration the perfection of a code of ordinance for said city.

J. H. PINKERTON, *Mayor*.

Council convened in obedience to above call at the time and place therein mentioned.

Present: Mayor, J. D. Spicer, J. M. Stratton, J. F. Ryerson, J. A. Ditmar, councilmen.

Called to order by mayor and above cal- read.

On motion and second, adjourned.

Attest: C. C. COLEMAN, *Mayor.*

Called Meeting.

CLAY CENTER, KANSAS, *July* 14, 1877.

To the marshall of the city of Clay Center, Greeting:

161 You are hereby commanded to notify the members of the council of said city that there will be a special meeting of said council at theor usual place of meeting on the 14th day of July, 1877, at 10 o'clock a. m., for the purpose of hearing and considering the reports of the committee on ordinances.

J. H. PINKERTON, *Mayor.*

Present: Mayor and all council except Jno. Higinbotham.

Council met in obedience to above call at the time and place therein designated.

After reading of said call the committee on ordinances reported as follows:

On motion and second, council adjourned.

Attest: C. C. COLEMAN, *Clerk.*

Minute Proceedings of City Council.

CLAY CENTER, KANSAS, *October 23rd*, 1877—7½ o'cloek p. m.

Council met pursuant to a special call issued by the mayor.

Called to order, mayor in the chair.

Quorum present.

The bond of I. T. Purcell was presented to the council for approval, said bond being such as is required by the city ordinance to give by dram-shop keepers.

On motion, said bond was accepted and ordered filed.

A petition signed by 12 persons, residents of the city of Clay Center, praying for sidewalks and crossings on the west side of Sixth street from the N. E. corner of block No. 43 south to the railroad was presented to and accepted by the council.

There being no further business, on motion, the council adjourned.

Attest: NEWTON ALLEN, *City Clerk.*

Minutes of the Council Proceedings.

CITY OF CLAY CENTER, KANSAS,
April 3rd, A. D. 1878—8 o'clock p. m.

Council met in special session to canvass the vote cast at the city election held April 1st, A. D. 1878.

Called to order, mayor in the chair.
162 Quorum present.
On motion, adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Council Proceedings.

CLAY CENTER, KANSAS, *August 17th*, 1878—7 p. m.

Council met in special session pursuant to call by mayor.
Called to order, mayor in the chair.
Quorum present.
The mayor stated that the object of the meeting was to consider and act upon the resignation of U. P. Ensey as police judge.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Council Proceedings.

CLAY CENTER, KANSAS,
September 30th, 1878—7 o'clock p. m.

Council met in special session pursuant to call of the mayor.
Called to order, mayor in chair.
Quorum present.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Council Proceedings.

CITY OF CLAY CENTER, KANSAS,
April 10th, A. D. 1879, at 7½ p. m.

The council met in special session to canvass the city election holden April 7th, A. D. 1879, for the purpose of election of city officers for the ensuing year and were called to order, the mayor in the chair.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of the Proceedings of the City Council.

CLAY CENTER, *May 1st*, 1879—7½ p. m.

The council met in special session pursuant to a call issued by the mayor for such session to consider an ordinance relating to special license tax and were called to order, mayor in the chair
163 and a quorum present.
On motion, ordinance No. 65 was placed upon its first reading and referred to committee on ordinances.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Proceedings of City Council, Special Session.

CITY OF CLAY CENTER, KANSAS,
July 9th, 1879—8 o'clock p. m.

The city council met in special session pursuant to a call issued by the mayor in words and figures following, to wit, acting:

CLAY CENTER, KANSAS, *July 9th*, 1879.

To the city marshal, Greeting:

You are hereby ordered to notify the councilmen of Clay Center that there will be a special meeting at 8 o'clock this p. m. of the council at their usual place of meeting for the purpose of passing resolutions of respect for late city marshal and to make preperations to attend the funeral in a body.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of the Proceedings of the City Council.

CITY OF CLAY CENTER, CLAY COUNTY, KANSAS,
July 26th, 1879, at 8 o'clock p. m.

The council met in a special session pursuant to a call issued by the mayor in words and figures, to wit:

CLAY CENTER, KANSAS, *July 26th*, 1879.

To the city marshal, Greeting:

You are hereby ordered to notify the councilmen of the said city that there will be a special meeting of the city council at their usual place of meeting on this 26th day of July, 1879, for the purpose of considering the appointment of a city marshal and street commissioner.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

164 *Minutes of the Proceedings of the City Council.*

CITY OF CLAY CENTER, KANSAS, *July 28th*, 1879—8 p. m.

The council met in special session pursuant to a call issued by the mayor in words and figures, to wit:

CLAY CENTER, KANSAS, *July 28th*, 1879.

To the city marshall, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a meeting of the city council at their usual place of meeting this 28th day of July, 1879, at 8 o'clock p. m.,

for the purpose of considering the appointment of a city marshal and street commissioner.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of the Proceedings of the City Council.

CITY OF CLAY CENTER, KANSAS,
August 13th, 1879—8 o'clock p. m.

The council met in special session pursuant to a call issued by the mayor in the words and figures following, to wit:

CLAY CENTER, KANSAS, *August* 13, 1879.

To the city marshal, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a meeting of the council at their usual place of meeting this 12th day of August, 1879, at 8 o'clock p. m., for the purpose of considering bills against the city.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

165 *Minutes of the Proceedings of the City Council.*

CITY OF CLAY CENTER, KANSAS,
August 25th, 1879—8 o'clock.

The council met in special session pursuant to a call issued by the mayor of said city; which call is in words and figures as follows:

CLAY CENTER, KANSAS, *August 25th*, 1879.

To the city marshal, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be — special meeting of the council at their usual place of meeting on the 25th day of August, 1879, at 8 o'clock p. m., for the purpose of considering petitions for license for saloons.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Proceedings of the City Council.

CITY OF CLAY CENTER, KANSAS,
September 10th, 1879—8 o'clock p. m.

The council met in special session pursuant to a call issued by the mayor, said call being in the words and figures following, to wit:

CLAY CENTER, KANSAS, *Sept.* 10th, 1879.

To the city marshal*l*, Greeting:

You are hereby ordered to notify the members of the city council that there will be a special meeting of the council at their usual place of meeting this 10th day of September, 1879, at 8 o'clock p. m., for the purpose of considering the bonds of C. E. Peters to keep a saloon.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.

Attest: C. E. GIFFORD,
City Clerk pro Tem.

Minutes of the Proceedings of the City Council.

CITY OF CLAY CENTER, KANSAS,
September 11th, 1879—8 o'clock p. m.

166 The council met in special session pursuant to a call issued by the mayor in words and figures following, to wit:

CLAY CENTER, KANSAS, *September 11th*, 1879.

To the city marshal*l*, Greeting:

You are hereby ordered to notify the members of the city council of the city of Clay Center, Kansas, that there will be a meeting on this 11th day of September, 1879, at 8 o'cloc*l* p. m., for the purpose of considering the petitions for saloon lisence.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.

NEWTON ALLEN, *City Clerk.*

Minutes of Proceedings of City Council.

CITY OF CLAY CENTER, KANSAS,
October 30th, 1879—at 8 o'clock.

The council met in special session pursuant to a call issued by the mayor, said call being in the words and figures following, to wit:

CLAY CENTER, *October 30th*, 1879.

To the city marshal*l*, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a special meeting of the council at their usual place of meeting o*n* this 30th day of October, 1879, at 1–2 o'clock p. m., for the purpose of considering the delinquent sidewalk tax and making arrangements for the collection of the same.

J. H. PINKERTON, *Mayor.*

On motion, council adjourned.

Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Council Proceedings.

CITY OF CLAY CENTER, KANSAS,
December 12th, 1879—at 8 o'clock p. m.

The council met in special session pursuant to a call issued
167 by the mayor in words and figures following, to wit:

To the city marshal*l* of the city of Clay Center Kansas, Greeting:

*Y*ou are hereby ordered to notify the councilmen of said city that there will be a special meeting of the council at their usual place of meeting on the 12th day of December, 1879, at 8 o'clock p. m., for the purpose of considering the bills against the city.

J. H. PINKERTON, *Mayor.*

On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes od Council Proceedings, Special Session.

THE CITY OF CLAY CENTER, KANSAS,
January 12th, 1880—at 7½ o'clock p. m.

The council met pursuant to a call issued by the mayor in words and figures following, to wit:

Call.

CLAY CENTER, KANSAS, *January 12th*, 1880.

To the marshal*l* of the city of Clay Center, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a special meeting of said councilmen at their usual place of meeting at 7½ o'clock p. m. on this 12th day of January, 1880, for the purpose of considering communications from the mayor in regard to sidewalks being obstructed by citizens and to consider and take measures to prevent the county commissioners of Clay county from leasing or otherwise obstructing our sidewalks.

J. H. PINKERTON, *Mayor.*

Council was called to order by the mayor.
A quorum present.
On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Special Session. Minutes of Council Proceedings.

CITY OF CLAY CENTER,
February 6th, 1880—5 o'clock p. m.

168 The city council met in special session pursuant to a call for the meeting issued *n*y the mayor; which said call is in the words and figures, to wit:

CLAY CENTER, KANSAS, *February* 6, 1880.

To the marshall of the city of Clay Center, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a special meeting of the council at their usual place of meeting of the 6th day of Feb., 1880, at 5 o'clock p. m., for the purpose of considering an ordinance granting the right of way to the J. C. & Ft. K. R. R. W. Co. through said city of Clay Center.

J. H. PINKERTON, *Mayor.*

Council called to order by the mayor.
All the councilmen present.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Special Session. Minutes of the Council Proceedings.

CITY OF CLAY CENTER, KANSAS,
March 17, 1880—8 o'clock p. m.

The council met in a special session pursuant to a call issued by the mayor, said call being in words and figures following, to wit:

CLAY CENTER, KANSAS, *March 17th*, 1880.

To the marshall of the city of Clay Center, Greeting:

You are hereby commanded to notify the councilmen of said city that there will be a special meeting of the council at their usual place of meeting on this 17th day of March, A. D. 1880, at 8 o'clock p. m., for the purpose of considering ordinances.

J. H. PINKERTON, *Mayor.*

Council called to order by the mayor.
A quorum present.
169 On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Special Session. Minutes of Council Proceedings.

CITY OF CLAY CENTER, KANSAS,
March 17th, 1880—8 o'clock p. m.

City council met in special session pursuant to a call issued by the mayor; which said call was in words and figures following, to wit:

CLAY CENTER, KANSAS, *March 17th*, 1880.

To the marshall of the city of Clay Center, Greeting:

You are hereby commanded to notify the councilmen of said city that there will be a special meeting at their usual place of meeting on this 17th day of March, 1880, at 8 o'clock p. m., for the purpose of considering ordinances.

J. H. PINKERTON, *Mayor.*

Council was called to order by the mayor.
A quorum present.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

Minutes of Council Proceedings.

CITY OF CLAY CENTER, KAN.,
May 3rd, 1880—8 o'clock p. m.

The city council met in special session pursuant to a call issued by the mayor, said call being in the words and figures following, to wit:

Minutes of Council Proceedings.

CLAY CENTER, KANSAS, *May 3rd*, 1880.

City council met in special session pursuant to a call issued by the mayor, said call being in the words and figures following, to wit:

CLAY CENTER, KANSAS, *May 3rd*, 1880.

To the city marshall of Clay Center, Greeting:

You are hereby ordered to notify the councilmen of said city that there will be a meeting of the council at their usual
170 place of meeting May 3rd, 1880, at 8 o'clock p. m., for the purpose of considering petitioners for saloon license.

J. H. PINKERTON, *Mayor.*

The council was called to order by the nayor.
Quorum present.
On motion, the council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

CITY OF CLAY CENTER, KANSAS,
May 6th, 1880—8 o'clock p. m.

The council met in special session in pursuance to call issued by president of council in words and figures following to wit:

To the marshall of Clay Center, Kansas, Greeting:

You are hereby ordered to summon the councilmen of said city to meet at the usual place of meeting this evenong at 8 o'clock *p. m.* to consider a petition for a dram-shop license in said city.

J. L. NOBLE,
President of the Council.

Called to order, president of the council presiding.
Mayor absent.
Quorum present.
On motion, council adjourned.
Attest: NEWTON ALLEN, *City Clerk.*

CLAY CENTER, KANSAS, *May* 11, 1880.

Council met in pursuance or previous adjournment, Mayor Pinkerton presiding.
Quorum present.

The following communication from J. H. Pinkerton was read:

CLAY CENTER, KANSAS, *May 11th*, 1880.

Adjourned to meet next Tuesday evening, May 18, 1880.

J. H. PINKERTON, *Mayor.*

Attest: B. F. FLENNIKEN, *City Clerk.*

CLAY CENTER, KANSAS, *May* 18, 1880.

Council met in accordance with previous adjourned.

Called to order by Mayor Pinkerton.

Quorum present.

171 The following communication from J. W. Miller was read:

On motion, adjourned to meet Tuesday evening, May 25, 1880.

J. H. PINKERTON, *Mayor.*

Attest: B. F. FLENNIKEN, *City Clerk.*

CLAY CENTER, KS., *June* 17, 1880.

Council met in special session as per the following call of the mayor:

CLAY CENTER, KAS., *June* 17, 1880.

To the marshall of the city of Clay Center, Greeting:

You are hereby ordered to notify the councilmen of said city that there will be a special meeting of the council at their usual place of meeting on the 17th of June, 1880, at 10 o'clock a. m., for the purpose of considering bills against the city.

J. H. PINKERTON, *Mayor.*

There *was* present J. H. Pinkerton, mayor, and Councilmen Wigg, Flood, Vincent, and Noble.

On motion, adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

CLAY CENTER, KANSAS, *July* 20, 1880.

Council met in special session as per the following call by the mayor:

CLAY CENTER, KANSAS, *July 20th*, 1880.

To the marshal, Greeting:

You are hereby ordered to notify the councilmen of the city of Clay Center that there will be a special meeting at 8 o'clock p. m. of the 20th day of July, 1880, for the purpose of considering ordinances and receiving and acting upon reports of committees.

J. H. PINKERTON, *Mayor.*

There were present Mayor Pinkerton and Councilmen Wigg, Vincent, Noble, and Myers.

There being no further business, the council adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

172 CLAY CENTER, KANSAS, *Nov.* 11, 1880.

Agreeably to the following call, the council met in special session.

Present: John H. Pinkerton, mayor, presiding; Councilmen Ira A. Flood, Geor*hs* Wigg, —— Myers, and J. L. Noble.

MAYOR'S OFFICE, CLAY CENTER, Ks., 11, 11, 1880.

To the marshal*l* of the city of Clay Center, Greeting:

You are hereby ordered to notify the councilmen and clerk of said city that there will be a special meeting of the council at their usual place of meeting on the 11th day of November, 1880, at 7½ o'clock p. m., for the purpose of considering ordinances.

Respectfully, J. H. PINKERTON, *Mayor.*

There being no further business, the council adjourned to meet on Tuesday evening, Nov. 16th, at ½ past 7 o'clock, for the consideration of ordinances.

Attest: B. F. FLENNIKEN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *May* 11, 1881.

Council met in special session as per the following:

MAYOR'S OFFICE, CLAY CENTER, KAN., *May* 11y*h*, 1881.

To T. K. Poorman, city marshal*l* of the city of Clay Center, Kansas:

You are hereby ordered to notify the councilmen and clerk of the council that there will be a meeting of the council in the council chambers at 8 o'clock p. m. this Wednesday evening, May 11, 1881.

C. R. BARNES, *Mayor.*

Ordinance No. 51 was then read and passed to second reading; whereupon, on motion, the rules were suspended and section No. 1 of ordinance No. 51 was read, and, on motion of Mr. Campbell, was amended by striking out the words three hundred dollars and inserting: for city attorney, one hundred dollars.

On motion, the committees of laws and ordinances was instructed to report an ordinance to prohibit the use of barb wire for
173 fences in the city limits.

On motion, the council adjourned to meet on Tuesday evening, May 17, 1881, at 8 o'clock p. m.

Attest: B. F. FLENNIKEN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *June* 8, 1881.

Council met in special session as per the following call:

MAYOR'S OFFICE, *June* 8, 1881.

To T. K. Poorman, city marshal*l:*

You are hereby ordered to notify the councilmen and city clerk that there will be a meeting of the council at the council chambers this Wednesday evening at 8 o'clock for the purpose of allowing claims, making appointments, and for the purpose of transacting any other business that may be presented.

C. R. BARNES, *Mayor.*

Mayor Barnes presiding.

Upon call of the roll the following gentlemen answered to their

names: Mr. Achenbach, Mr. Beatty, Mr. Campbell, Mr. Gifford, and Mr. Ristine.

On motion, the council adjourned to meet June 14, 1881.

Attest: B. F. FLEMNIKEN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *Sept.* 8, 1881.

Council met in special session, Mayor Barnes presiding.

Upon call of the roll the following gentlemen answered to their names: Messrs. Achenbach, Campbell, McIntire, and Ristine.

On motion, the reading of the previous meeting was dispensed with and the clerk directed to read the following communication from his honor the mayor:

MAYOR'S OFFICE, CLAY CENTER, KANSAS, *Sept.* 8, 1881.

To W. J. Carson, city marshall:

You are hereby ordered to notify the councilmen and city clerk that there will be a meeting of the council at the council chambers at 7 o'clock this p. m. for the purpose of considering plans and propositions that wil- be presented to you by the Kansas Central R. R. Co. in regard to their laying a track through this city.

On motion, adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

174 COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *Sept.* 20, 1881.

Council met in special session, Mayor Barnes presiding.

Messrs. Achenbach, Beatty, Gifford, and Ristine answered to their names.

Mayor Barnes states the object of the meeting to be to take some appropriate action on the sad death of our beloved President, James A. Garfield, and submitted a proclamation requesting a "suspension of business from 12 to 6 p. m. of this day and some appropriate ceremonies in the evening by the band, and together with the tolling of bells and the firing of minute guns."

On motion, Messrs. Achenbach and Beatty were appointed a committee to procure minute guns, and Messrs. Ristine and Gifford were appointed to make arrangements for tolling the bells.

On motion, adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *Oct.* 13, 1881.

Counsel met in special session as per the following call of the mayor:

MAYOR'S OFFICE, CLAY CENTER, KANSAS, *Oct.* 13, 1881.

To W. J. Carson, city marshall:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber at 8 o'clock this p. m. for the purpose of entertaining a proposition from H. A. Louis, Esq., of Topeka, Kansas, to furnish this city with fire-engine, hose, &c., which will be presented for their consideration by him in person.

(Signed) C. R. BARNES, *Mayor.*

On call of the roll Councilmen Achenbach, Beatty, Gifford, McIntire, and Ristine answered to their names.

On motion, adjourned, subject to call of mayor.

Attest: B. F. FLENNIKEN, *City Clerk.*

175 COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *Nov.* 3, 1881.

Council met in special session as per the following call of the mayor:

MAYOR'S OFFICE, CLAY CENTER, KS., *Nov.* 3, 1881.

To W. J. Carson, city marshall:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber this evening at 8 o'clock sharp to hear the report of the fire-engine committee and to take some action in regard to purchasing an engine for the city.

C. R. BARNES, *Mayor.*

Mayor Barnes presiding, and Councilmen Achenbach, Campbell, McIntire, and Ristrine answering to their names.

On motion, adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

COUNCIL CHAMBER, CLAY CENTER, KANSAS, *Nov.* 4, 1881.

Council met in special session as per the following call of the mayor:

MAYOR'S OFFICE, CLAY CENTER, KANSAS, *Nov.* 4, 1881.

To W. J. Carson, city marshall:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting in the council chambers this Friday evening at 7 o'clock for the purpose of continuing the consideration of purchasing a fire engine.

C. R. BARNES, *Mayor.*

Mayor Barnes in the chair, and Councilmen Achenbach, Campbell, Gifford, McIntire, and Ristine.

176 Mr. Achenbach, from the fire committee, submitted the following proposition.

On motion, adjourned.

Attest: B. F. FLENNIKEN, *City Clerk.*

COUNCIL CHAMBER, CLAY CENTER, KANS., *Jan'y* 6, 1882.

Council met in special session as per the following call of the mayor:

MAYOR'S OFFICE, *Jan'y* 6, 1882.

To W. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber at 7 o'clock this p. m. for the purpose of transacting any business that would have come before them at their regular meeting on Tuesday

eve., the 3rd inst., had it not been postponed on account of the excursion to Leavenworth.

C. R. BARNES, *Mayor.*

Mayor Barnes in the chair and Councilmen Achenbach, Campbell, Gifford, McIntire, and Ristine present.
On motion, adjourned.

S. S. McINTIRE,
Clerk pro Tem.

COUNCIL CHAMBER, CLAY CENTER, KANS., *Jan'y* 17, 1882.

Council met in special session as per the following call of the mayor:

MAYOR'S OFFICE, *Jan'y* 17, 1882.

To W. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber at 7½ o'clock this p. m. for the purpose of appointing and confirming a city clerk and to receive a communication from the Kansas Central Railroad Co. and for the transaction of any other business that may come before the council.

C. R. BARNES, *Mayor.*

177 Mayor Barnes in the chair, and Councilmen Achenbach, Beatty, Gifford, McIntire, and Ristine present.
Minutes of January 6, 1882, read and approved.
On motion, adjourned.

S. S. McINTIRE,
City Clerk pro Tem.

COUNCIL CHAMBER, CLAY CENTER, KAN., *Jan.* 19, 1882.

Council met in special session pursuant to the following call of the mayor:

MAYOR'S OFFICE, *Jan'y* 19, 1882.

To W. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting this p. m. at 7½ o'clock, at the council chamber, for the purpose of giving the newly appointed city clerk an opportunity to qualify and enter upon the duties of that office.

C. R. BARNES, *Mayor.*

Mayor Barnes presiding, and Councilmen Campbell, McIntire, Gifford, Ristine, and Achenbach present.
On motion, adjourned until first Tuesday in February, 1882.
Attest: H. E. LACY, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANS., *March* 10, 1882.

Council met in special session at 8 p. m. as per the following call of the mayor:

CLAY CENTER, KAN., *Mar.* 10, 1882.

To Wm. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and the city clerk that there will be a council meeting at the council chamber this p. m. at 7½ o'clock for the purpose of the further consideration of ordinance No. 55 and such other business as may be presented.

C. R. BARNES, *Mayor.*

178 Upon call of the roll the following councilmen answered to their names: Achenbach, Beatty, Campbell, Gifford, and McIntire.

On motion of Mr. McIntire, reading of minutes *were* dispensed with until next meeting.

On motion, council adjourned.

Attest: H. E. LACY, *City Clerk.*

COUNCIL CHAMBERS, *May* 15*th*, 1882.

Council met pursuant to the following call:

CLAY CENTER, KANSAS, *May* 15*th*, 1882.

To W. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chambers at 8 o'clock this p. m. to afford the recently appointed city clerk — to qualify and take possession of the office and for the consideration of any other business that may be presented.

C. R. BARNES, *Mayor.*

Meeting opened at 8 o'clock, Mayor Barnes presiding.

Present: Councilmen McIntire, Beatty, Gifford, and Lutt. Absent: Messrs. Flood and Kehoe.

On motion, the council adjourned until the regular meeting.

Attest: A. A. GODDARD, *Clerk.*

COUNCIL CHAMBERS, *August* 10*th*, 1882.

Council met in special session pursuant to the following call issued by the mayor:

MAYOR'S OFFICE, CLAY CENTER, KAN., *Aug.* 10, 1882.

To W. J. Carson, city marshal:

179 You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber at 8 o'clock p. m. of this date for the purpose of taking some action with the view of aiding the Clay Co. Institute in perfecting plans and in defraying the expense of a free exhibit of stock, farm, and garden produces of the farmers of Clay Co., to be held at Clay Center, Kas., on Friday and Saturday, Oct. 13 and 14, 1882.

C. R. BARNES, *Mayor.*

Mayor Barnes presiding, and Councilmen Gifford, Kehoe, Lutt, Flood, and McIntire present.

Councilman Beatty absent.

Reading of minutes of last meeting dispensed with.

On motion, adjourned.

F. P. HARKNESS,
Clerk pro Tem.

COUNCIL CHAMBERS, *Dec. 5th*, 1882.

No quorum present.

Adjourned subject to the call of the mayor.

Attest: A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *Dec. 8th*, 1882.

Council met pursuant to call of the mayor.

Present: Mayor Barnes, Councilmen Gifford, Lutt, McIntire, and Beatty.

Absent: Councilmen Flood and Kehoe.

Minutes of the last regular meeting read and approved.

On motion, adjourned.

Attest: A. A. GIDARD, *Clerk.*

COUNCIL CHAMBERS, *Dec. 19th*, 1882.

Council met pursuant to a call of mayor for the purpose of consideration of *for* purchase of a fire-bell.

Present: Mayor Barnes and Councilmen Gifford, Lutt, Flood, and Kehoe.

Absent: Councilmen McIntire and Beatty.

On motion, adjourned.

Attest: A. A. GODARD, *City Clerk.*

180 COUNCIL CHAMBERS, *September 6th*, 1882.

Council met pursuant to adjournment.

Present: Mayor Barnes, Councilmen Gifford, Flood, Lutt, McIntire, and Beatty.

Councilmen Kehoe absent.

Minutes of last two meetings read and approved.

On motion, adjourned.

Attest: A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *Jan. 9th*, 1883.

Council met in special session pursuant to adjournment.

Present: Mayor Barnes, Councilmen Beatty, Gifford, McIntire, Lutt, Kehoe, and Flood.

Councilmen Beatty absent.

Reading minutes of last meeting.

Adjourned.

Attest: A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *February 1st*, 1883.

Council met in special session pursuant to the call of the mayor.

Present: Mayor C. R. Barnes, Councilmen Kehoe, Flood, McIntire, and Lutt.

Reading minutes of last meeting dispensed with.

Adjourned.

A. A. GODARD, *City Clerk.*

H.

CLAY CENTER, *Feb.* 26, '83.

Council met in special session at the office of the mayor.

Present: Mayor Barnes, Councilmen Messrs. Lutt, Flood, Kehoe, and McIntire.

On motion, adjournned.

A. A. GODARD, *Clerk.*

COUNCIL CHAMBERS, *April* 27, 1883.

Council met in special session pursuant to the call of the mayor.

CLAY CENTER, KANSAS, *April 27th*, 1883.

To W. J. Carson, city marshal:

You are hereby ordered to notify the councilmen and city clerk that there will be a council meeting at the council chamber this evening at 8 o'clock for the purpose of canvassing the votes
181 cast in the recent election of councilmen for the Third ward.

C. R. BARNES, *Mayor.*

At roll-call there were present Mayor Barnes and Councilmen McIntire, Flood, Lutt, and Beatty.

Absent: Councilman Kehoe.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *May* 2, 1883.

Counsel met in special session pursuant to adjournment.

Present: Mayor Gifford, Councilmen Kehoe, Warren, Flood, Lutt, Henry, and Grubs.

Minutes of last three meetings read, corrected, and approved.

On motion, adjourned till Tuesday evening, May 8th.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *May 8th*, 1883.

Council met pursuant to adjournment.

Present: Mayor Gifford, Councilmen Kehoe, Warren, Flood, Henry, and Grubs.

Absent: Councilman Lutt.

Minutes of last meeting read and approved.

Adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *August 20th*, 1883.

Council met in pursuance to the following call:

MAYOR'S OFFICE, CLAY CENTER, KAS., *Aug.* 20, 1883.

To the city marshal:

You will notify the members of the city council that there will be a meeting of the city council to-night, Aug. 20th, for the purpose of considering the petition of James Thompson and other business that may come before the council.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford, Councilmen Kehoe, Lutt, Grubs, Warren, and Henry.

Councilman Flood absent.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

182 COUNCIL CHAMBERS,

CLAY CENTER, KANSAS, *Sept.* 17, 1884.

Council met pursuant to the following call:

SEPT. 17, 1884.

To Wm. Carson, city marshal:

You will notify the members of the city council that there will be a special session of the council to-night for the purpose of considering an ordinance in relation to license.

C. E. GIFFORD, *Mayor.*

On motion, adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KAS., *Oct.* 13*th*, 1884.

Council met pursuant to adjournment.

Present: Mayor Gifford and Councilmen Wickstrum, Flood, Henry, and Kibbey.

Councilmen Warren and Henry absent.

Minutes of the preceeding meetings were read and approved.

The petition of R. H. Oxley and others that a sidewalk be built on the south side of Dexter street between Sixth and Seventh Sts. was read and — to the committee on streets and alleys.

The report of the sexton was read and reported to the committee on cemetery.

An ordinance entitled An ordinance vacating a part of the alley in block fifty of the city of Clay Center, Kansas, was presented and read for the first time, and, on motion, the rules were suspended and the ordinance was read for the second time, section by section, and was so adopted The question being then put—Shall the ordinance pass?—Councilmen Wickstrum, Flood, Henry, and Kibbey voted aye, and the ordinance was declared duly passed.

The following bills were presented and referred to the committee on claims and accounts:

W. J. Carson, salary	$75 00
C. J. Stafford, special police	8 00
B. Baker, do.	8 00
J. S. Boughton, criminal docket	15 00
C. E. Gifford, lumber	95 07
Trenton rubber works, *hoes*, &c.	488 04
U. P. R'y Co., freight	19 95

183 On motion, the rules were suspended and the committee allowed to report immediately. Whereupon they reported in favor of allowing all of said bills, and, on motion, the report was received, the bills allowed, and the clerk instructed to draw warrants for the same.

The committee on fire department were instructed to purchase a hose cart and hook-and-ladder truck and to use their discretion in accepting either of the propositions laid before the city.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *May* 8, 1885.
CLAY CENTER KAS., *May* 8, 1885.

Council met in regular session.

Present: Mayor Walton, Councilmen Fraizer, Wickstrum, Miller, Beihl, Kibbey, and Dexter.

Minutes of last meeting read and approved.

The water-works committee returned without report the petition of J. L. Starkweather and others for the *paying* of water pipes along West Lincoln avenue to the bank of Huntress creek for the reason that the distance of extension is not definite.

On motion, the petition is laid upon the table.

On motion, the clerk was directed to request the late city clerk and the late street commissioner for their annual reports.

Adjourned to meet at the Dispatch office Monday evening, May 11th.

A. L. RUNYAN, *City Clerk.*

CLAY CENTER, KAS., COUNCIL CHAMBERS, *June* 2, '85.

Council called to order.

Present: Mayor Walton, Councilmen Frazier, Kibbey, Miller, and Wickstrum.

Absent: Beihl and Dexter.

Minutes of last meeting read and approved.

184 Councilman Frazier read an ordinance relating to fees of certain city officers, which was, by unanimous consent, read the first time.

The rules were then suspended and the ordinance read a second time and so adopted.

The question then being put, "Shall the ordinance pass?" Councilman Frazier, Kibbey, Miller, and Wickstrum voted aye, and the ordinance was declared duly passed.

A programme was then proposed for the water-works celebration of June 6th.

On motion, the fire-dept. committee was appointed a committee on programme.

On motion, Councilman Frazier was appointed a committee on music.

On motion, Com. Wickstrum was appointed *was appointed* a committee on decoration.

On motion, Councilman Frazier was appointed a committee on reception.

On motion, the mayor was directed to see that the invited guests of the city were properly entertained.

On motion, the com. on city property was directed to have grass in Central park cut.

Adjourned to meet Wednesday evening, June 3, 1885.

A. L. RUNYAN, *City Clerk.*

CLAY CENTER, KAS., COUNCIL CHAMBERS, *June* 3, 1885.

Council called to order.

Present: Mayor Walton, Councilmen Frazier, Beihl, Dexter, Kibbey, Miller, and Wickstrum.

Minutes of last meeting read and approved.

Ways and means committee asked for further time to report.

Granted.

Laws and ordinance committee asked for further time to report.

Granted.

Committee on streets and alley reported that it was impracticable and inadvisable to repair the sewer between blocks 42 and 47 of this city.

Report adopted.

Committee on city property reported that a man had been secured to cut the grass in Central park, as ordered by the city.

City clerk was directed to correspond with Carleton & Co. in regard to damaged goods received from them.

185 Propositions from lumbermen to furnish the city with lumber were laid over until the next meeting. The proposition of George Wright to put up a telephone line from the engine-house to the water works for the sum of $40.00 was accepted.

On motion, the following resolution was passed:

Resolved, That the judge of this judicial district be asked to set a new date for hearing the petition extending the city limits, set for June 2nd.

The following bills were reported upon favorably by the committee on claims and acc'ts and allowed by the council:

J. M. Worley, boarding prisoners; G. W. Martin, salary assistant marshal to June 1, '85, $40.00; A. A. Godard, salary as city clerk to May 1, '85, $62.50.

Adjourned to meet Friday evening, June 5th.

A. L. RUNYAN, *City Clerk.*

COUNCIL CHAMBERS, *June* 9, 1885.

Present: Mayor Walton, — Fraizer, Beihl, Kibbey, Miller, and Wickstrum.

Minutes of last meeting read and approved.

Committee on claims and acc'ts reported favorably on following accounts, which, upon motion, were allowed: W. Carson, work on fire apparatus, $1.50; Drake & Orton, 8 hydrants, con., $128.00; Drake & Orton, 1 hydrant and set, $82.00; expenses entertainment June 7th, $73.25; clerk, stamps, $2.00; Dr. Warren, mem. board of health, $20.00; J. M. Worley, boarding prisoners, $7.60.

On motion, water works Co. was directed to move hydrant on corner of Fourth street and Lincoln avenue.

On motion, city clerk was instructed to notify insurance ag'ts by publication in city papers that all agents found doing business for insurance companies on Monday, June 13, '85, without a license will be arrested and prosecuted for violation of city ordinances.

Adjourned.

A. L. RUNYAN, *City Clerk.*

186 COUNCIL CHAMBERS, *Dec.* 7, 1886.

Council met in regular session pursuant to adjournment.

Council called to order by Mayor H. M. Frazier in the chair.

Councilmen present: A. F. Dexter, P. M. Conrad, Rezin Iams, H. Smith, H. W. Miller.

Absent: J. H. Shawhan.

The committee on library had nothing to report; committee had nothing to report. The committee on water works reported as follows:

To the honorable mayor and councilmen of the city of Clay Center:

We, the committee on water works, beg leave to report as follows: That we have examined the records in regard to the legality of the water contract between this city and John E. Bonebrake, of Abilene, his successor- — assigns, and we found, to our satisfaction, that the same is illegal and void. Furthermore, we also obtained legal opinion from three different attorneys as to the legality of the same, and their opinion invariably is that ordinance No. 64 and the contract between the city of Clay Center and John E. Bonebrake, of Abilene, his successors and assigns, is illegal, void, and of no force whatever.

(Signed) P. M. CONRAD,
HENRY SMITH,
HARRY W. MILLER, *Com.*

On motion, the report was accepted.

The following resolution of the committee on water works was then read:

Resolved, That this council does not recognize a supposed contract between the city of Clay Center and John E. Bonebrake, of Abilene, his successors or assigns, for the furnishing of water to the

aforesaid city and its inhabitants, and that the said city council will not appropriate any more money for hydrant rental when
187 the aforesaid contract and ordinance No. 64 is illegal and void.

P. H. CONRAD.

On motion, the resolution was laid over for the time being.

COUNCIL CHAMBERS, *January* 25, 1887.

Council met in regular adjourned session.

In case of the absence of Mayor H. M. Frazier, President H. W. Miller took the chair.

Councilmen present: Rezin Iams, J. H. Shawen, P. M. Conrad, Henry Smith.

Absent: A. F. Dexter.

Minutes of previous meeting read and approved.

Moved by Councilman Miller that the city of Clay Center will sell the fire-engine for $250.00, delivered on board the cars at Clay Center, Kansas.

Carried.

On motion, the committee on fire department were instructed to purchase one dozen expanding rings for hose.

COUNCIL CHAMBERS, *February* 21*st*, 1887.

Council met pursuant to request and call as follows:

CLAY CENTER, KAS., *February* 21, 1887.

To the mayor of the city of Clay Center, Kas.:

We, the undersigned, councilmen of said city, hereby request you to call a special meeting of the council of said city to meet at the council chambers on Monday, Feb. 21, 1887, at 8 o'clock p. m., to take action in the matter of the sale of the fire-engine and attachments thereunto belonging to said city.

(Signed) A. F. DEXTER.
HENRY SMITH.
P. M. CONDAR.

"*Call.*"

MAYOR'S OFFICE,
CITY OF CLAY CENTER, KANSAS, *February* 21*st*, 1887.

In compliance with the above request I hereby call a special meeting of the council of the city of Clay Center, Kansas, at the council chamber, in said city, on this the 21st day of Feb'y, 1887, at 8 o'clock p. m.

H. M. FRAZIER, *Mayor.*

Mayor H. M. Frazier in the chair.

188 Councilmen present: H. W. Miller, A. F. Dexter, Rezin Iams, J. H. Shawhan, P. M. Conrad, Henry Smith.

The proposition from Onaga to purchase the fire-engine was, on motion, accepted.

The following is a copy of the communication from said city:

ONAGA, KANSAS, *Feb.* 17*th*, 1887.

COUNCIL CHAMBERS, *March* 1*st*, 1887.

Council called to order by mayor, H. M. Frazier, in the chair.

Councilmen present: J. H. Shawhan, Rezin Tams, A. F. Dexter, H. W. Miller, and P. M. Conrad.

Absent: Henry Smith.

Minutes of the previous meeting read and approved as corrected.

Councilman Smith came in at this juncture of the *rpoceedings* and was reported present.

The clerk was instructed to notify W. H. Rossington that the council of the city does not recognize as legal the pretended contract between the city and Jno. E. Bonebrake, his successors or assigns, and that the council adheres to the resolution adopted by it on the 7th day of December, 1886, as found on page 175 of the minutes of its proceedings.

On motion, the council adjourned, to meet Feb. 10th, 1887, at 7.30 p. m.

Attest: A. McARTHUR, ——.

COUNCIL CHAMBER, *Feb.* 6*th*, 1883.

Regular monthly meeting of the council.

Present at roll call: Mayor Barnes, Councilmen McIntyre, Flood, Kehoe, and Lutt.

Gifford and Beatty absent.

Minutes of last meeting read and approved.

The petition of J. P. Campball and 64 others, praying the council to contract with the Holly Water Works Company for the construction of water works in this city, etc., read and approved.

Mr. McIntyre moved that the *the* petitions be granted, and that a committee be appointed to confer with the agent of the Holly
189 Water Works Co. relative to the construction of such works as prayed for.

Carried.

Messrs. McIntyre, Gifford, and Flood appointed as such committee.

Mr. Kehoe moved that a committee of three be appointed to wait upon the b'd of Co. commissioners at their meeting on Tuesday next and confer with them in regard to paying for one or two hydrants for the protection of county property in case of fire.

Carried.

Messrs. Kehoe, Lutt, and Flood appointed as such committee.

Mr. Lutt moved that when we adjourn we adjourn subject to the call of the mayor.

Motion carried.

The mayor was requested to communicate with Mr. Bonebrake, of Abilene, and request him to meet with the council at his earliest

convenience for the purpose of making further arrangements relative to water works.

The following bills referred to the com. on claims and accounts and forthwith reported back with the recommendation that the same be paid, viz: W. J. Carson, salary for Jan'y & 7 days, $53.50; Times Printing Company, printing, $20.00; F. B. Dawes, salery, Jan'y, $25.00; W. D. Vincent & Co., 4 plungers, $5.00; L. A. McDonald, night watch, Jan'y, $40.00; Ira A. Flood, hardware, $6.00; Ramsey, Millet & Hudson, docket, $20; W. D. Vincent & Co., hose and coupling, $33.00.

The report of the committee approved and the said bills ordered to be paid as reported.

Communication from E. B. Preston & Co. relative to order No. 1401 received and referred to committee on ways and means.

On motion, adjourned, subject to call of mayor.

A. A. GODDARD, *City Clerk.*

COUNCIL ROOMS, CLAY CENTER, *Feb'y 9th*, 1883.

Council met under the call of the mayor pursuant to adjournment.

Present: Mayor Barnes, Councilmen Gifford, Lutt, Flood, McIntyre, and Kehoe. Mr. Beatty absent at roll-call but present later in the evening.

Minutes of last meeting read and approved.

190 The consideration of the question of water works special order of business for the evening.

Mr. Mayor stated that pursuant to the action of the council at the last meeting he had invited Mr. Bonebrake, the agent of the Holly Water Works Co., to meet with the council, and had also invited a large number of the citizens to be present, who would be at liberty to express their views on the question before the council.

Mr. Bonebrake explained the Holly system of water works and, to some extent, the nature and terms of the contract and franchise which his company desired from the city government. The question also discussed by Messrs. H. H. Taylor, Wm. Read, D. A. Valentine, and others.

Mr. Beatty moved that Mr. Bonebrake be requested to submit the ordinance he has prepared for adoption by the council on this subject to the committee appointed at the last meeting. Carried.

On motion, adjourned.

A. A. GODDARD, *Clerk.*

COUNCIL CHAMBERS, *M'ch 6th*, 1883.

Council met in regular session, Mayor Barnes presiding.

Councilmen Lutt, Beatty, Flood, and McIntire present.

Minutes of last two meetings read and approved.

The special committee on water works made a partial report. The same was accepted and com. continued.

The following bills presented and referred to the com. on claims and accounts:

Mr. McIntire moved that a proposition to vote $35,000 in bonds

for the construction of water works in this city be submitted to the voters at the next city election, and that the mayor make proclamation therefor. Carried.

On motion, adjourned.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, *April 6th*, 1883.

Council met according to adjournment, Mayor Barnes presiding.

191 Councilmen McIntire, Kehoe, Flood, Lutt, Gifford, and Beatty present.

Minutes of the last meetings read and approved.

On motion, the council proceeded to canvass the votes of the recent city election and found them as follows:

For the issuing of the bonds of the city in the sum of $35,000 for the purpose of building water works, 72; against the issuing of the bonds of the city in the sum of $35,000 for the purpose of building water works, 233.

The vote being announced, the following persons were declared elected to the offices respectively as follows for the term of two years: Mayor, C. E. Gifford; city attorney, F. B. Dawes; justices of the peace, J. W. Miller and P. S. Loofbourrow; constables, S. Langworthy and Wm. Hanny; city treasurer, J. D. Spicer; treasurer of board of education H. G. Highinbotham; police judge, J. A. D. Frazell; councilman 1st ward, L. J. Warren; councilman 2nd ward, O. F. Lutt; councilman 3rd ward, J. A. Menry; member board of education 1st ward, A. E. Reynolds; 2nd ward, G. M. Stratton; 3rd ward, J. L. Noble.

And it was also declared that the proposition for the issuing of the bonds for the city in the sum of $35,000 for the purpose of building water works did not carry.

On motion, the clerk was instructed to draw warrants for the amounts due the clerks of election.

Adjourned.

A. A. GODDARD, *Clerk.*

COUNCIL CHAMBERS, *Nov. 9th*, 1883.

Council met pursuant to adjournment.

Present: Mayor Gofford and Councilmen Flood, Kehoe, Warren, Grubs, Lutt, and Henry.

Minutes of last meetings read and approved.

Mr. Bonebrake, of Abilene, was present and discussed the subject of water works.

Councilmen Warren, Lutt, and Henry were appointed a committee to confer with Mr. Bonebrake in regard to feasibility and cost of water works for the city.

On motion, adjourned till Sat., Nov. 10, 1883.

A. A. GODDARD, *City Clerk.*

192 COUNCIL CHAMBERS, *Nov. 10th*, 1883.

Counsel met pursuant to adjournment.

Present: Mayor Gifford, Councilmen, Flood, Lutt, Kehoe, Grubs, and Warren.

Minutes of last meeting read and approved.

Councilmen Warren presented the report of the committee appointed to confer with Mr. Bonebrake in reference to water works as follows:

That Mr. Bonebrake's proposition was to lay four miles of pipe and place 40 hydrants, the city to pay for 34 hydrants the first year, 37 the second year, and at least 40 hydrants each year thereafter, at $100.00 per hydrant; payment to be made semi-annually each year on the 1st day of January and the first day of July. The committee recommended that Mr. Bonebrake be asked to submit a contract in accordance with his proposition for the consideration of the council.

On motion, the report was accepted, and Mr. Bonebrake was asked to submit such contract.

The petition of J. M. Frank and others in reference to peddlers was presented and, on motion, laid on the table.

Adjourned.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, *December 18th*, 1883.

Council met in special session pursuant to the following call:

CLAY CENTER, KANSAS, *Dec. 18th*, 1883.

To Wm. Carson, city marshal:

You will please inform the members of the city council that there will be a special meeting of the council to-night, Dec. 18th, 1883, at 7.30, to consider a proposition in regard to water works and any other business that may come before it.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford, Councilmen Flood, Grubs, Lutt, and Kehoe.

Absent: Councilmen Warren and Henry.

Mr. John E. Bonebrake was present and presented an ordinance in reference to water works, which was read.

193 On motion, a committee was appointed to locate water mains and to report at the next meeting.

The mayor appointed as such committee Councilmen Flood, Grubs, and Henry.

On motion, council adjourned until Wednesday, Dec. 19th, at 3 p. m.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, *Dec. 19th*, 1883.

Council met pursuant to adjournment.

Present: Mayor Gifford, Councilmen Flood, Grubs, Lutt, Warren, and Henry.

Absent: Councilman Kekoe.

Councilman Flood asked to introduce an ordinance entitled An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof; which leave being granted, the ordinance was introduced and read for the first time.

On motion, adjourned.

Attest: A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, *Jan. 2nd*, 1884.

Council met pursuant to adjournment.

Present: Mayor Gifford, Councilmen Flood, Grubs, Lutt, and Henry.

Absent: Councilmen Kehoe and Warren.

Minutes of last meetings read and approved.

The committee on claims and accounts reported favorably on the following bills: W. J. Carson, $58.00; J. A. Henry, $74.45; C. E. Gifford, $155.49; W. Allaway, $19.75; H. G. Highinbotham, $10.00; Ramsey, Millet & Hudson, $20.00.

On motion, adjourned until Friday evening, January 4th, 1884.

A. A. GODDARD, *City Clerk.*

CLAY CENTER, KAS., *Jan. 8th*, 1884.

Council met in special session pursuant to the following call:

CLAY CENTER, KAS., *Jan. 8th*, 1884.

To Wm. Carson, city marshall:

You will notify the members of the city council and the city attorney that there will be a special meeting of the city council
194 to-night at 7.30 *p. m.* for the purpose of considering an ordinance in regard to water works and any other business that may come before them.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford, presiding, and Councilmen Flood, Grubs, Lutt, Warren, and Henry.

Concilman Kehoe absent on account of sickness.

The ordinance entitled An ordinance to provide for a system of water works and supply of water to the city of Clay Center and the inhabitants thereof was read for the second time, section by section. and so adopted.

The question then being put, "Shall the ordinance pass?" Councilmen Flood, Grubs, Lutt, Warren, and Henry voted "aye," Councilman Kehoe absent and not voting, and the ordinance was declared duly passed.

On motion, adjourned.

A. A. GODDARD, *City Clerk.*

CLAY CENTER, KAS., *Jan. 23rd*, 1884.

Council met in special session pursuant to the following call:

CLAY CENTER, KAN., *Jan. 23rd*, 1884.

To Wm. Carson, city maeshall:

You will please notify the members of the city council that there will be a meeting of the council to-night, Jan. 23rd, 1884, at 7 o'clock *p. m.*, for the purpoese of executing a contract with J. E. Bonebrake with reference to water works according to ordinance No. 64.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford and Councilmen Flood, Grubs, Lutt, and Henry.

John E. Bonebrake was present and presented a contract for water works in accordance with ordinance No. 64, which was read by the clerk.

On motion of Mr. Flood, the mayor and city clerk were authorized to execute said contract, all the councilmen present voting aye.

On motion, adjourned.

A. A. GODDARD, *City Clerk.*

195 COUNCIL CHAMBERS, *Feb. 5th*, 1884.

Council met in regular session.

Present: Mayor Gifford and Councilmen Flood, Warren, Lutt, and Grubs.

Councilmen Henry and Kehoe absent.

Minutes of the last regular meeting and the special meetings of last month read and approved.

Councilman Flood, for the committee on claims and accounts, reported favorably on the following bills: P. P. Kehoe, $5.00, etc.

On motion, adjourned.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KAS., *July 7th*, 1884.

Council met pursuant to the following call:

MAYOR'S OFFICE, CLAY CENTER, KANSAS, *July 7th*, 1884.

To William Carson, city marshall:

You will please notify the members of the city council that there will be a special meeting of the council to-night, July 7th, at 8 o'clock *p. m.*, to take action in regard to the ordinance in regard to water works.

C. E. GIFFORD, *Mayor.*

Present: Mayor Gifford and Councilmen Wickstrom, Flood, Kibbey, and Henry.

Councilmen Warren and Lutt absent.

Mr. Bonebrake was present and asked for an extension of time in which to complete the water works for the city, and the following resolution was introduced by Councilman Flood:

Resolved, That the time stated in ordinance 65 and in the contract made thereunder between the city of Clay Center and J. E.

Bonebrake for the completion of the water works under said ordinance and contract be, and the same is hereby, extended to July first, 1885, upon these conditions, to wit: That the said J. E. Bonebrake or his assigns shall before the first day of November,
196 1884, lay water main on Fifth street, Lincoln avenue, and Court street, with not more than ten and less than eight hydrants, according to said contract, and furnish water supply sufficient to throw three streams, each eighty feet high*t*, for fire purposes; then, in such case, upon the completion of said water works the city council shall, if satisfactory, approve the part so completed, and such approval and the payments due therefor shall date from the completion of such mains above mentioned; payment for such hydrants to be made at the rate of seventy-five dollars per annum rental.

Which resolution was duly seconded and carried.

On motion, adjourned.

Attest: A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, *Nov. 4th*, 1884.

No quorum present.

Adjourned till Tuesday evening, Nov. 18, 1884.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, KANSAS, *Nov.* 18, 1884.

Council met pursuant to adjournment.

Present: Mayor Gifford and Councilmen Warren, Flood, Lutt, Henry, Kibbey, and Miller.

Mr. Drake, of the Holly Water Works Co., was present, together with Mr. J. E. Bonebrake, and asked for an extension of the time in which to complete that part of the water works necessary for fire protection; and, on motion of Councilman Warren, the following resolution was adopted:

Resolved, That the time for completing that part of the water works necessary for fire protection be extended to Jan. 1st, 1885.

The city attorney was instructed to draw an ordinance in regard to dividing the city into four wards and present the same at the next meeting of the council.

On motion, adjourned.

A. A. GODDARD, *City Clerk.*

COUNCIL CHAMBERS, *March 12th*, 1885.

Council met pursuant to adjournment.

197 Present: Mayor Gifford, Councilmen Warren, Flood, Miller, Lutt, and Henry.

Minutes of the last meeting read and approved.

The city attorney was instructed to notify the water works company to level Fifth St. where water mains had been laid.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *April 17th*, 1885.

Council met in special session pursuant to the following call:

CLAY CENTER, KANSAS, — 17, 1885.

To William Carson, city marshal:

You will please notify the members of the city council that there will be a council meeting to-night, April 17, 1885, to pass on bills, transact business in regard to the water works, and such other business as may regularly come before it.

C. E. GIFFORD, *Mayor*.

Present: Mayor Gifford and Councilmen Warren, Miller, Lutt, Flood, Henry, and Kibbey.

Minutes of last meetings read and approved.

The special committee to whom was referred the matter of locating hydrants for the use of the city reported the following resolution:

Resolved, That the Clay Center Water Company be directed to locate the hydrants to be rented by the city as follows: At corner of Third and Clark streets, at corner of Fourth and Clark streets, one at the corner of Fourth and Crawford streets, one at the corner of Fourth and Court streets, one on Grant avenue between Fifth and Sixth streets, in center of block; one at corner of Lincoln Ave. and Sixth streets, one at corner of Court and Sixth streets, one on Court street, in center of block between Fifth and Sixth streets; one at corner of Court and Fifth streets, one at corner of Dexter and Fi-th streets, one at corner of Clark and Fifth streets, one at corner of Blunt and Fifth streets, one at corner of Huntress and Fifth streets, one at corner of Lane and Sixth, one at the corner of Crawford and Sixth streets, one at corner of Dexter and Sixth streets, one at corner of Grant Ave. and Sixth streets, one at corner of Grant Ave. and Seventh streets, one at corner of Dexter and Seventh streets, one at corner of Lane and Seventh streets, one at corner of Lane and Eighth streets, one at corner of Crawford and Eighth streets, one at corner of Dexter and Eighth streets, one on Eighth street, at center of block between Court street and Lincoln Ave.; one at corner of Grant avenue and Eighth street, one on Clay street, at center of block between Fourth and Fifth streets; one on corner of Grant avenue and Fourth streets, one on Lincoln Ave., at center of block between Fourth and Fifth streets; two at the corner of Clay and Fifth streets, one on Fifth street, at center of block between Grant Ave. and Clay streets; two at the corner of Grant avenue and Fifth streets, one on Fifth street, at center of block between Lincoln and Grant avenues; two at corner of Lincoln avenue and Fifth street, one on Lincoln avenue, at center of block between Fifth and Sixth streets; one on Fifth street between Court street and Lincoln avenue, one at corner of Court and Fifth streets, and one at corner of Pomroy and Fourth streets.

198

Also be it resolved that specials be located as follows: One at corner of Webster and Fifth streets, one at corner of Fredrick and Fifth streets, one at corner of Lane and Fifth streets, one at corner

of Crawford and Fifth streets, one on Eighth street near corner of Blunt, one on Crawford street, in center of block between Seventh and Eighth streets; one at corner of Seventh and Crawford streets, one on Sixth street, at center of block between Court street and Lincoln avenue.

Which resolution was duly carried.

Thereupon the following resolution was presented and duly adopted:

199 Resolved, That Messrs. Brake and Orton, builders of the Clay Center water works, be, and are hereby, authorized to put in one extra hydrant for the city, at an expense of eighty-two dollars, and eight specials, as heretofore located, at an average cost not to exceed sixteen dollars each, payment to be made to them for such hydrant and specials by July 1, 1885.

Councilman Warren presented the following resolution:

Resolved, That the Clay Center Water Co. be allowed pay for fifteen hydrants, at the rate of seventy-five dollats per hydrant per annum, as per resolution of July 7th, 1884, the pay for said hydrants to date from January 15, 1885.

On a motion to adopt the resolution, the ayes and no-s were called, with the following result: Councilmen Warren, Flood, Henry, and Kibbey voting aye, Councilman Miller voting no, Councilman Lutt not voting, and the resolution was declared duly adopted.

On motion, adjourned.

A. A. GODARD, *City Clerk.*

COUNCIL CHAMBERS, *May* 5, 1885.

Council met in regular session.

Present: Mayor Gifford, Councilmen Warren, Flood, Kibbey, and Miller.

The minutes of the last regular meeting were read and approved, with the exception that Councilmen Miller stated that it was his understanding that the water works company were not to receive the hydrant rental due until after the entire system is completed and accepted, and that he thought the bill of Mr. Wixom was included in the list of claims and accounts twice for the same work.

On motion of Council- Flood, seconded by Councilman Warren, the councol adjourned *sine die.*

T. A. CORDRY, *Clerk pro Tem.*

COUNCIL CHAMBERS, *May* 28, 1885.

Council met in special session.

Present: Mayor Walton, Councilmen Farizer, Biehl, Dexter, Kibbey, Miller, and Wickstrum.

200 The minutes of last meeting read.

On motion of Councilman Fraizer, the minutes were amended so as to read: "Following the middle of Huntress creek to its natural mouth."

The minutes were then approved.

On motion of Councilman Fraizer, the official test of the water

works was set for Wednesday, May 27, 1884, between four and six o'clock p. m.

Adjourned to meet Wednesday at 4 o'clock p. m.

A. L. RUNYAN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, Ks., *May* 28, 1884.

Council called to order.

Present: Mayor Walton, Councilmen Frazier, Biehl, Kibbey, and Wickstrum.

Councilman Wickstrum moved the adoption of the following resolution:

Resolved, That the water works company having complied with that portion of section 3 of ordinance No. 64 which provides that "the water works shall have a sufficient capacity to throw four streams eighty feet high or maintain its equivolent in pressure from any four hydrants hereinafter mentioned; said streams to be thrown through one-inch ring nozzles at the end of fifty feet of two and one-half inche hose; all mains shall be of standard hight and strength water pipe and be covered by sufficient depth of earth to -revent freezing, and said water works and every part thereof shall be of sufficient power and capacity to furnish the water contemplated and provided for in this ordinance, to the satisfaction of the council," the water works be accepted by the city of Clay Center, Kansas.

The roll being called, Councilman Fraizer, Beihl, Kibbey, and Wickstrum voted aye, and the resolution was unanimously carried.

Adjourned.

A. L. RUNYAN, *City Clerk.*

COUNCIL CHAMBERS, CLAY CENTER, *September* 1, 1885.

Council met in regular session, Mayor Walton in the chair.

Councilmen present: Fraizer, Beihl, Dexter, Kibbey, Miller, and Wickstrum.

Minutes of the previous meeting were read and approved with corrections.

201 The resignation of A. L. Runyan, city clerk, was read and accepted.

Mayor Walton nominated W. M. Grove to fill vacancy caused by the resignation of A. L. Runyan.

On motion of Councilman Beihl, the rules were suspended and the nomination was confirmed by acclamation.

The city attorney, being absent from the city, was represented by Senator F. P. Harkness.

The com. on fire departments reported fire-plug located on the corner of Fourth street and Lincoln Ave. out of place.

The following document was presented by the water works and ordered to be *be* spread on the minutes:

This — to certify that the Farmers' Loan and Trust Company of New York City, N. Y., is the duly authorized trustee of the Clay Center Water Company for the bonds issied by the company, and all money due said water company from the city of Clay Center for

fire-hydrant rental is payable to said trustee direct, according to sec. 9 (nine) of the contract between the said city and said water company.

J. E. BONEBRAKE, *President.*
D. A. VALENTINE, *Secretary.*

The ways and means committee made the following report:

To the honorable mayor and council of the city of Clay Center:

We, your committee on ways and means, beg leave to report that we would recommend the levy of ten mills for general purposes; the levy of four (4) mills for bringing to grade and improving streets and alleys; also a levy of eight (8) mills to pay hydrant rental, and that the city clerk be instructed to certify at once the said levy to the county clerk.

On motion, the council adjourned to meet at five o'clock Wednesday, Sept. 2.

W. M. GROVE, *City Clerk.*

Adjourned Meeting.

COUNCIL CHAMBER, CLAY CENTER, *Sep.* 3, 1885.

Council met in pursuance to adjournment, Mayor Walton in the chair.

Councilmen present: Frazier, Beihl, Dexter, Kibbey, Miller, and Wickstrum.

202 The finance committee reported the following bills as approved, and, on motion of Councilman Beihl, were allowed:

J. M. Grubs, lumber	$32 74
C. E. Gifford, lumber	66 17
Badger Lumber Company, lumber	35 95
W. S. Shaubel, salery as sexton	20 00
George W. Martin, salery as marshal	50 00
Nathan Lee, salery as St. com.	50 00
A. L. Runyan, salery as clerk	20 85
C. P. Thompson, work roads-craper	25 50
John McKean, cleaning park	7 87½
Hiram McKean, labor on streets	3 75
Wm. Van Buskirk, hauling dirt	75
Moses & Talkington, for barrel	1 50
Wirt Walton, printing	45 40
Farmers' Loan and Trust Co., for hydrant rental	705 13

The city attorney *pro tem.* presented his opinion in writing.

Councilman Miller moved the opinion be spread upon the minutes.

Carried.

To the honorable mayor and council of the city of Clay Center:

(In the Matter of the Claim of the Clay Center Water Company against the City of Clay Center, Kansas.)

The Clay Center Water Company presented a claim against said city for rental of fifteen fire hydrants from January 15th, '85, to June 1st, '85, at the rate of $75.00 per annum, $413.80.

The question referred to the city attorney is whether or not such claim is a legal and valid claim against the city, which the latter is under obligation to pay.

The ordinance in relation to the water works took effect Jan. 17th 1884, and the contract between the city and John E. Bone
203 brake, made in accordance therewith, was executed on the 23rd day of Jan., 1884. Sec. 4 of said contract provides as follows: "The city of Clay Center hereby agree- to rent, for the full term of this contract, of the said John E. Bonebrake, his successors and assigns, forty double-nozzle hydrants, to be located on said pipes and mains as the council may be resolution direct, at an annual rental of one hundred dollars each, payable semi-annually on the first days of January and July of each year: Provided, however, that the said forty hydrants for the first year after the completion thereof, shall be three thousand four hundred dollars and for the second year three thousand seven hundred dollars, to be paid semi-annually as aforesaid, but for each and every — after the second year the annual rental of each of said forty hydrants shall be one hundred dollars, payable as aforesaid, without discount, and the said John E. Bonebrake, his successors and assigns, shall extend said mains and pipes at any time when ordered to do so by the mayor and council of said city of Clay Center."

Sec. 10 makes the following provision: "The said John E. Bonebrake, his successors and assigns, shall construct said water works and complete the same as herein provided on or before the first day of November, A. D. 1884, and shall execute with the city of Clay Center a contract in writing for the faithful performance *on* the said John E. Bonebrake, his successors and assigns, of the agreements and covenants hereof and the duties, liabilities, and obligations imposed upon the said John E. Bonebrake, his successors and assigns, by this ordinance and compliance with the orders and directions of the mayor and *and* council as provided herein, which contract shall be executed within five days from the publication of this ordinance and signed by the mayor on the part of the city of Clay Center and attested by the clerk with the seal of said
204 city." Having failed to complete the water works at the time designated in section 10, Mr. Bonebrake, on the 7th day of July, 1882, *he* appeared before the council at a special meeting and asked an extension of time in which to complete the water works for the city; whereupon the following resolution was adopted:

Resolved, That the time stated in ordinance 65 (64) and the contract thereunder between the city of Clay Center and J. E. Bonebrake for the completion of the water works under said ordinance and contract be, and the same is hereby, extended to July 1st, 1885,

upon these conditions, to wit: That the said J. E. Bonebrake or his assigns shall before the first day of November, 1884, lay water mains on Fifth street, Lincoln Ave., and Court street, with not more than ten or less than eight hydrants, according to said contract, and furnish water supply sufficient to throw three streams, each eighty feet in hight*h*, for fire purposes; then, in such case, upon the completion of said water works, the city council shall, if satisfactory, approve the parts so completed, and such approval and the payments due there*of* shall date from the completion of said mains above mentioned, payment for such hydrants to be made at the rate of $75 per annum rental.

On the 18 day of Nov., 1884, a further extension was asked, and the following resolution was adopted by the council, to wit:

Resolved, That the time for completing that part of the water works necessary for fire protection be extended to Jan. 1st, '85.

It does not appear from the record whether or not that portion of the works was completed on the *on the* first of January, but does appear that at a meeting held on the 17 day of April, 1885, the following resolution was adopted, to wit:

Resolved, That the Clay Center Water Company be allowed pay for 15 hydrants at the rate of $75 per hydrant, as per resoluti-n of July 7th, 1884, the pay for said hydrants to date from January 15, 1885.

205 On the 28th day of May, 1885, the water works were duly accepted. (See Minute Book, page 23.) Such are the facts of record.

It is conceded that under ⁋ 114 of chap. 13 of the Compiled Laws (1881) the city council had authority to make and enter into a contract, which it did make with J. E. Bonebrake on the 23d day of January, 1884, and therefore, without expressing any opinion thereon, I shall assume that such original contract was in all respects lawful.

I assume also that the Clay Center Water Company is the legal successor of J. E. Bonebrake.

The original does not contemplate the payment of any hydrant rental until the forty hydrants contracted for were located and the works completed (see sec. 4), which, under sec. 10, was to be the 1st day o*d* November, 1884. No provision was *make* in the original contract for the payment of rental upon any portion of the hydrants until the entire forty are completed. Even if no other further stipulation had been made, I am of the opinion that the only fact that would follow the failure to complete the works at the time agreed upon, inasmuch as time does not seem to have been made the essence of the contract, would be to subject Mr. Bonebrake or the company to the payment of such damages as resulted to the city by reason of such failure. If the time be set in which certain work is to be done is not in general so far the substance of the contract that if the work be done, but not until some time later, no compensation will be recovered, but leaving the defendant to sho*e*w any injury he has sustained by the delay, by way of set-off, 3 par's on contract 384, 2 par's on co*n*tracts 523 and 660, but in the fact the city has by

acquies-ing in the delay in extending the time waived any right to recover any damages.

The city council unquestionably had power to grant such extension.

206 While it is well settled that the terms of a written contract cannot be veried by any previously executed contract, written or parol, yet it is equally settled that the terms of the contract may be varied, modified, waived, annulled, or wholly set aside by a subsequently executed contract, whether such subsequently executed contract be in writing or parol. Todd *vs.* Allen, 18 Kan., 545.

This rule applies as well to cities and other corporations contracting within the limits of their powers as to individuals, and it cannot be said in this case that the city did not have power to modify, amend, or waiver the provisions of the contract in question with reference to time of the completion of the works, the amount of hydrant rental to be paid, or the time of payment, the other party assenting thereto.

Insomuch as the resolution of July 7th attempts or purports to amend sec. 10 of ordinance 64, it is doubtless of no effect, as an ordinance cannot be amended in that way; but as between the city and Mr. Bonebrake or his successors it modifies the contract and fixes a new and different date for the completion of the works. It also specifies that a certain rental shall be paid for a certain number of hydrants before the completion of the entire works. Both parties assent to the changes, and this resolution constitutes a new contract between them as to those features embraced in its terms.

The further extension of time granted on the 18th of November, at the request of Mr. Bonebrake, is a further modification of the contract as to time, which the parties had a right to make.

The same may be said in relation to the resolution adopted April 17, 1885, allowing pay for 15 hydrants from Jan. 15, 1885, while it does not appear on records of that meeting that the allowance was assented to by the water Co. Yet the action taken then has never been rescinded and the water Co. has now, if not before, ac-

207 cepted a provision by presenting its claim in accordance therewith.

It has been suggested that the resolution of July 7 restricts the number of hydrants to be completed Nov. 1st to not less than 8, not more than ten (10), and the question is raised as to whether or not the council did not exceed their authority in allowing rental for fifteen (15) hydrants.

In fact, the 15 hydrants were completed on or before the 15th day of January and the city has had the benefit of fire protection therefrom, there be- nothing to prohibit the city council in a fit of generosity or from a sense of justice, as the case may be, from further modifying the contract by providing for the payment of rental for such number of hydrants and for such time as the city has had the use and benefit of.

I am therefore of the opinion that the said claim is a legal and valid claim against the city.

This opinion is based upon the records as above set forth and as they appear upon the books of the city.

Respectfully submitted.

F. P. HARKNESS,
Acting City Attorney.

Councilman Beihl moved that the amount be appropriated to pay the trustees of Clay Center Water Company. Carried.

Councilman Wickstrum moved that the city treasurer be requested to ask the county treasurer to pay over the money for hydrant rental. Carried.

The city clerk was directed to send the scrip to the trustees as soon as the money was paid over for $705.13.

Councilman Wickstrum offered the following resolution, which was adopted:

Resolved, That this council consider it the duty of the water works company to remove any and all hydrants that may have been placed inside of the outside line of any sidewalk in this
208 city without charge to the city when called upon to do so.

On motion, the council adjourned.

W. M. GROVE, *City Clerk.*

COUNCIL CHAMBERS, *Jan.* 5, '86.

Council met in regular session.

Present: Mayor Walton, Councilmen Fraizer, Beihl, Kibbey, and Wickstrum, and City Attorney Dawes.

Absent: Councilmen Dexter and Miller.

The matter of petition of Rezin Iams *et al.* was taken up, and, after some discussing, Councilman Wickstrum moved that the petition be granted.

Carried.

Councilman Miller offered the following resolution:

Resolved, That the clerk be, and he is hereby, instructed to issue a warrant on the treasurer in the sum of seventeen hundred dollars ($1,700) in favor of the trustee of the bondholders of the Clay Center Water Company in full payment for hydrant rental due Jan. 1st, 1886.

All councilmen voting in the affirmative except Dexter, absent.

On motion, adjourned till Friday evening, Jan. 8.

W. M. GROVE, *City Clerk.*

COUNCIL CHAMBERS, *July* 13, 1886.

Council met pursuant to adjournment.

Present: Mayor Walton, Councilmen Beihl, Conrad, Miller, and Smith. Mr. Beihl was excused, and Mr. Dexter, coming at this juncture of the proceedings, *and* was reported present; also Mr. Fraizer.

Coun. Beihl moved that the claim of the water Co. for hydrant rental in the sum of $1,725.00 be allowed.

Carried.

On motion, adjourned to meet Thursday, July 22, 1886, at 8 o'clock p. m.

W. M. GROVE, *City Clerk.*

209 In the Circuit Court of the United States, District of Kansas.

FARMERS' LOAN & TRUST CO., Plaintiff,
vs.
THE CITY OF CLAY CENTER and THE CLAY CENTER WATER CO., Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit that the above and foregoing are true and correct copies of minutes of various meetings held by the mayor and city council of the city of Clay Center, Kansas, since 1875, as the same now appears on record in the office of the city clerk of said city.

It is further stipulated that the aforesaid copies of the minutes of proceedings by said mayor and council contains all of the proceedings had by and before said mayor and council concerning the alleged contract set up in the complainant's bill of complaint between J. E. Bonebrake, of the first part, and the said City of Clay Center, of the second part, and concernong all ordinances, resolutions, and proce-dings appertaining to the water works mentioned and described in complainant's said bill of complainant, and that said copies may be exhibited and read in evidence without further proof in said cause, subject only to proper exceptions for irrelevancy and immateriality, and the same in all respects as the original records.

It is further stipulated that as to the record of all meetings shown in said transcript that no other or different notice of said meetings was made or recorded except as the same appears upon said transcript.

It is further stipulated that unless said transcript of minutes otherwise shows that no written request of councilmen was
210 made for the calling of any of said special meetings. It is further stipulated and agreed that the city of Clay Center was, by proclamation of the governor of Kansas, duly created a city of the second class in April, 1881.

It is further stipulated and agreed that during the entire period of the existence of Clay Center as a city of the second class and continuously down until May 1st, 1888, the council was composed of six members.

It is further stipulated and agreed that the persons appearing to act as councilmen in the transcript of the minutes of proceedings of said council of the city of Clay Center were at all times the duly elected and qualified councilmen of said city at the several times they appear upon said transcript acting as such.

It is further stipulated that the following-named persons were councilmen during all the years respectively as hereinafter set forth:

1881.	1882.	1883.	1884.
Ira A. Flood.	W. S. Beatty.	P. P. Kehoe.	L. J. Warren.
Geo. Wigg.	C. E. Gifford.	L. J. Warren.	P. M. Wickstrum.
W. D. Vincent.	S. S. McIntire.	Ira A. Flood.	Ira A. Flood.
D. H. Myers.	Ira A. Flood.	O. F. Lutt.	J. A. Henry.
J. L. Noble.	O. F. Lutt.	J. A. Henry.	S. F. Kibbey.
	P. P. Kehoe.	J. M. Grubb.	O. F. Lutt.

1885.	1886.	1887.	1888.
H. M. Fraizer.	H. M. Fraizer.	L. K. Crandall.	L. K. Crandall.
P. F. C. Beihl.	P. S. C. Beihl.	R. D. McCord.	R. D. McCord.
P. M. Wickstrum.	A. F. Dexter.	H. W. Miller.	H. W. Miller.
A. F. Dexter.	Henry Smith.	A. F. Dexter.	A. F. Dexter.
H. W. Miller.	H. W. Miller.	Henry Smith.	Henry Smith.
S. F. Kibbey.	P. M. Conrad.	P. M. Conrad.	P. M. Conrad.
			H. E. Carter.
			P. R. Finch.

P. M. Wickstrum, from the 1st ward, having moved out of said ward, H. W. Miller was elected in his place on October 28th, 1884.

Oct. 19th, 1886, the resignation of H. M. Fraizer was accepted,
211 and the resignation of P. F. C. Beihl was accepted November 9th, 1886, and on Nov. 26th, 1886, at elections held in the First and Second wards, J. H. Shawhan was elected to take the place of Biehl, and Rezin Imes was elected to fill the vacancy caused by the resignation of H. M. Fraizer.

It is further stipulated and agreed that the water works in the city of Clay Center were in all respects complete- and finished in accordance with the terms of the alleged contract, and that from the day of their completion up to the present time as modified from time to time by resolutions of the council.

That from the day of the *day of the* completion of said water works up to the present time a full supply of water for domestic and sanitary purposes and for fire protection has been furnished to said city and its inhabitants.

That the city of Clay Center owns fire apparatus and has a building occupied as a fire department by a volunteer fire company, the chief of which is appointed by the city, and the members of which company are furnished free accommodations for sleeping therein.

That the city of Clay Center has laid a pipe from the main for its exclusive use into the fire-department building and has constantly used said water in the city buildings, and the street commissioner of said city has used said water for flushing gutters and culverts all free under the terms of said alleged contract and *are* now using it.

It is further stipulated and agreed that since the 10th day of July, 1886, the said city has refused to pay any money for hydrant rental under the terms of said alleged contract and has paid no money for such hydrant rental or for any use made by it of said water; that the said city has used on all necessary occasions said water at

said hydrants for the extinguishment of fires since the con-
212 struction and completion of said works up to the present time, and that said water is now ready and furnished for their continued use.

That said city erected drinking fountains in the city of Clay Center to which water was supplied for the use of the public without cost to the public or to said city.

That the water has been furnished by said water company in two

public school buildings of said city and furnished free at the request of the board of education of said city.

It is further stipulated and agreed that the said alleged contract as set out in said bill of complaint was signed by the said John E. Bonebrake and the said C. E. Gifford, who was then and there the mayor of said city, and attested by A. A. Goddard, who was then and there city clerk of said city, and the seal of said city thereunto attached on the 23rd day of January, A. D. 1884.

It is further stipulated and agreed that testimony on behalf of either party may be taken before H. W. Stackpole, notary public, and read in evidence at the hearing, and said testimony to be taken on or before the 29th day of May, 1888; and if either party desires to take testimony in rebuttal to the testimony at that time taken such party may have four days after the 29th day of May within which to take such testimony, and that the testimony of D. A. Valentine, if necessary, may be given orally at the hearing. It is further stipulated that the testimony of P. P. Kehoe and all other witnesses may be read in testimony without being signed.

Endorsed: No. 6012. Filed Aug. 8, 1888. A. S. Thomas, clerk.

213 THEODRICK F. SULLIVAN and GEORGE W. HENRY, Copartners Doing Business under the Firm Name and Style of T. F. Sullivan & Company, *vs.* SCHOOL DISTRICT NUMBER 39, Brown County, Kansas, and HENRY MONROE and MARY JANE MONROE. } No. 4417.

Error from Brown county reversed.

Syllabus.

By the court, VALENTINE, *J.:*

1. A contract for building a school-house void because made by only one member of the school board may afterward be ratified and made binding upon the school district by the full school board or by the school district.
2. The evidence in the present case tended to prove such a contract and such a ratification.

Held sufficient when attacked by a demurrer to the evidence.

All the justices concurring.

A true copy.

Attest: [SEAL.]

C. J. BROWN, *Clerk Supreme Court.*

214 THEODRICK F. SULLIVAN and GEORGE W. HENRY, Co-partners Doing Business under the Firm Name and Style of T. F. Sullivan & Company,

vs.

SCHOOL DISTRICT NUMBER 39, Brown County, Kansas, and HENRY MONROE and MARY JANE MONROE.

Error from Brown county reversed.

The opinion of the court was delivered by VALENTINE, *J.*:

This was an action brought in the district court of Brown county by Theodrick F. Sullivan and George W. Henry, partners as T. F. Sullivan & Co., against Hiram Eley, School District Number 39, Brown County, Kansas, Henry Monroe, Mary Jane Monroe, Richard F. Shubert, William Shubert, and Herman Shubert, to recover a personal judgment against Eley for $469.35 and to foreclose a mechanic's lien upon certain real estate belonging to the school district. It was alleged in the plaintiffs' petition and admitted in the school district's answer that the school district was and is the owner of the property upon which it is claimed the plaintiffs' mechanic's lien exists. The Monroes were the original owners of the property. Eley is the alleged contractor. The plaintiffs are alleged subcontractors, and the other parties claim to have liens upon the above-mentioned real property. The case was tried before the court and a jury. The plaintiffs introduced their evidence and rested. The school district then demurred to the evidence upon the ground that it did not prove any cause of action against the school district. The court sustained the demurrer and discharged the jury. The plaintiffs then moved for a new trial upon various grounds, which motion was overruled, and the court then rendered judgment in favor of the school district and against the plaintiffs for costs,
215 and to reverse this judgment the plaintiffs, as plaintiffs in error, bring the case to this court.

It is admitted by the pleadings that the school district owns the property upon which the mechanic's lien is alleged to exist. Henry Monroe and Mary Jane Monroe, his wife, were prior owners of the property. The property was purchased by the school district for the purpose of building a new school-house upon it, and such new school-house was in fact built, and has ever since been occupied and used by the school district for school purposes. It was erected and nearly completed by the alleged contractor, Hiram Eley, but just before its final completion he absconded from the State, leaving the building unfinished. The school district finished the same and has since occupied the same. The plaintiffs furnished building material to Eley while he was building the school-house to the value of $469.35, which building material was used in the construction of the building. They were not paid for such building material, and they filed a statement for a lien, &c. Everything seems to have been done, and sufficiently done, that was necessary to entitle the plaintiffs to their mechanic's lien, except that the original contract between Eley and the school district was not made in the

manner prescribed by law. It seems to have been originally made between Eley and only one member of the school board, but there was evidence introduced tending to show that the contract was afterward ratified and confirmed, not only by the other members of the school board, but also by the entire school district, and whether it could in law be so ratified and confirmed and so ratified and confirmed as to make it a valid and binding contract upon the school district and whether the evidence introduced upon the trial tended to prove any such ratification and confirmation are the only questions now involved in the case. It must be remembered that the case was disposed of in the court below merely
216 upon a demurrer to the plaintiffs' evidence. Hence the only real question for us now to consider is merely whether that portion of the evidence most favorable to the plaintiffs tended to prove the aforesaid ratification and confirmation or not and not whether the whole of the evidence in the case in fact proved the plaintiffs' case or not. Kansas City, Ft. Scott & Gulf R'l'd Co. *v.* Foster, just decided. It is admitted that the original contract with Eley was, at the time it was made, void for the reason that it was not made by the entire school board but only by a portion thereof. Aikman *v.* School District, 27 Kas., 129; Mincer *v.* School District, 27 Kas., 253. But it is claimed by the plaintiffs that the evidence introduced in the court below tended to show a ratification of the contract by the entire school board and also by the entire school district. We think such a contract might be ratified and might be made binding upon the school district. Fisher *v.* School District, 4 Cush., 494; Keyser *v.* School District, 35 N. H., 477; Kimball *v.* School District, 28 Vt. (2 Williams), 8; Jordan *v.* School District, 38 Me., 164; Cory *v.* Somerset, 45 N. J. Law, 445; S. C. 2 Am. & Eng. Corporation Cases, 48, note, and cases there cited; Albany City National Bank *v.* Albany, 92 N. Y., 363; S. C. 2 Am. & Eng. Corporation Cases, 61; Read *v.* Plattsmouth, 107 U. S., 568; S. C. 2 Am. & Eng. Corporation Cases, 300; Corwin *v.* Wallace, 17 Iowa, 374; Humphrey *v.* Patron's Merchantile Association, 50 Iowa, 607; Cook *v.* Tullis, 18 Wallace, 332; City of Conyers *v.* Kirk (Geo.), 3 S. E. Rep., 442; Sherman *v.* Fitch, 98 Mass., 59; Pinches *v.* Swedish Lutheran Church, 55 Conn., 183; Brown *v.* The City of Atchison, 38 Kas., and the numerous cases there cited. We think the evidence tended to prove that the contract was ratified by the school board and also by the school district. Hence the court below erred in sustaining the demurrer to the evidence. We shall not discuss this evidence in detail nor
217 further than we have already discussed it, for the reason that at the present time we have only the evidence of the plaintiffs, and when the defendants' evidence shall be introduced hereafter, if any such shall be introduced, it may make a very different case. We might say, however, that almost everything seems to have been done irregularly in that school district. In some cases the director ignored both the other members of the school board, and generally the director and the treasurer ignored the clerk, and the clerk often failed to make entries. It seems that the school dis-

trict and its officers permitted and perhaps even authorized these irregularities, and hence the courts should not construe these irregularities or these separate acts of the separate members of the school board too critically. That a mechanic's lien may be obtained on a school-house has long ago been determined by this court. Wilson *v.* School District, 17 Kas., 104; School District *v.* Conrad, 17 Kas., 522.

The judgment of the court below will be reversed and cause remanded for a new trial.

All the justices concurring.

A true copy.

Attest:

[SEAL.] C. J. BROWN,
Clerk Supreme Court.

Endorsed: No. 6012. Filed Aug. 8, 1888. A. S. Thomas, clerk.

218 In the Circuit Court of the United States, District of Kansas.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTER, Kansas, and THE CLAY CENTER WATER COMPANY, Defendants. } Decree.

And now, on this 15th day of June, at the June term, 1888, of said court, came on to be heard the above-entitled cause, said parties appearing by council, save The Clay Center Water Company, which appeared not, and thereupon said bill was taken as confessed against said The Clay Center Water Company; and thereupon evidence was introduced on behalf of said complainant and on behalf of said defendant The City of Clay Center, and said cause was argued by council, and at the conclusion thereof the court took said cause under advisement until the 7th day of August following; and thereupon, upon consideration of said pleadings and proof, at the date last mentioned this cause coming on further to be heard, the court doth find that the allegations and averments contained in said bill of complaint are true, and doth further find that the said city of Clay Center engaged and contracted, as in said bill of complaint alleged, with the complainant to pay direct to the complainant, in trust for the benefit of the holders of the bonds mentioned in said bill of complaint, all of said hydrant rental, or so much thereof as may be necessary to pay the interest upon said bonds, as provided for in said ordinance and contract.

It is further ordered, adjudged, and decreed that said ordinance and contract do make and constitute a lawful, valid,
219 and binding obligation on the part of said city of Clay Center to pay said hydrant rental to said complainant in trust for the benefit of said bondholders; that said ordinance is a valid and lawful ordinance and the contract made with said John E. Bonebrake and his assigns in pursuance of said ordinance is a lawful and binding contract and made with due and proper authority from said city.

And the court doth furthrt find that there was due and payable from said city of Clay Center on the 10th day of January, 1887, the sum of eighteen hundred and fifty dollars ($1,850), and that there is now due and recoverable from said city of Clay Center the sum of eighteen hundred and fifty dollars ($1,850), with interest thereon, at the rate of seven per cent. per annum, from said 10th day of January, 1887.

And the court doth further find that there was due and payable from said city of Clay Center on the 10th day of July, 1887, the further and additional sum of eighteen hundred and fifty dollars ($1,850), and that there is now due and recoverable from said city of Clay Center the further sum of eighteen hundred and fifty dollars ($1,850), with interest thereon, at the rate of seven per cent. per annum, from said 10th day of July, 1887; that the total amount due upon the principal and interest of said several sums on this 7th day of August, 1888, is the sum of four thousand and forty-two *and* dollars and sixty-five cents ($4,042.65).

It is therefore ordered, adjudged, and decreed that said complainant have and recover said sum of four thousand and forty-two dollars and sixty-five cents ($4,042.65), with interest thereon, at the rate of seven per cent. per annum, until paid, from said city of Clay Center, together with all of the complainant's costs, taxed at $—.

220 And it is ordered, adjudged, and decreed that said city of Clay Center shall pay said sum immediately upon demand made by said complainant or its attorneys upon the proper authorities of said city.

To all of which findings and the allowance of the foregoing decree said defendant duly excepted and excepts and prays an appeal to the Supreme Court; which said appeal is duly allowed and the bond fixed at the sum of $8,000.00.

DAVID J. BREWER,
Circuit Judge.

Endorsed: No. 6012. The Farmers' Loan & Trust Company *vs* The City of Clay Center, Kansas, *et al.* Decree. Filed Aug. 8, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

221 In the Circuit Court of the United States, District of Kansas.

THE FARMERS' LOAN AND TRUST CO., Complainant,
vs.
THE CITY OF CLAY CENTER, Kansas, and THE CLAY CENTER WATER CO., Defendants.

Know all men by these presents that the said City of Clay Center, Kansas, as principal, and P. M. Wickstrum, W. H. Fletcher, and H. H. Taylor, as sureties, are held and firmly bound unto the said Farmers' Loan and Trust Co., complainant, in the sum of eight thousand dollars, well and truly to be paid to the said Farmers' Loan and Trust Co. its administrators, heirs, and assigns, by the above-bounden, their respective heirs, administrators, and assigns.

The condition of the above obligation is such that whereas the said City of Clay Center, Kansas, defendant, has prayed an appeal to the Supreme Court of the United States from the final decree rendered in the above-entitled cause:

Now, if the said City of Clay Center, Kansas, shall prosecute its appeal to effect in said Supreme Court and shall pay all costs and damages resulting to said Farmers' Loan and Trust Co., complainant, by reason of said appeal if the same shall not be sustained, then the above obligation shall be void; otherwise to remain in full force and virtue.

In testimony whereof we have hereunto set our hands this 27th day of August, 1888.

J. F. BILLINGS, *Mayor.*

Attest:

[SEAL.] A. McARTHUR, *City Clerk.*

P. M. WICKSTRUM.
W. H. FLETCHER.
H. H. TAYLOR.

STATE AND DISTRICT OF KANSAS, *County of Clay,* } ss:

We, the undersigned, whose names are subscribed to the
222 foregoing bond, do each of us on oath depose and say—

That we are each of us individually worth the sum of $3,000.00 over and above all debts, liabilities, and exemptions; and further deponents say not.

P. M. WICKSTRUM.
W. H. FLETCHER.
H. H. TAYLOR.

[SEAL.] Subscribed and sworn to before — this 27 day of August, A. D. 1888.

ERIC H. SWENSON,
Notary Public, Clay County, Ks.

Com. expires Jan'y 25th, 1891.

Approved Sept. 18, 1888.
C. G. FOSTER, *Judge.*

Endorsed: No. 6012. U. S. circuit court. The Farmers' Loan & Trust Co., plaintiff, *vs.* City of Clay Center *et al*, defendant-. Bond. Filed Sept. 18, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

223 In the Circuit Court of the United States, District of Kansas.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE CITY OF CLAY CENTER, Kansas, and THE CLAY CENTER WATER COMPANY, Defendants.

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

I, the undersigned, George F. Sharitt, clerk of the above-entitled court, do hereby certify that the above and foregoing is a true and correct copy of the bill of complaint, answer, and replication filed herein; that all pleadings, proceedings, orders, stipulations, and decrees, and all depositions and exhibits, together with all endorsements upon said foregoing pleadings, process, and proceedings, are included within and form a part of the foregoing transcript of record; that the same are in all respects true copies, and that the foregoing comprises a full and complete transcript of record down to and including the final decree in the suit of The Farmers' Loan & Trust Company *vs.* The City of Clay Center, Kansas, *et al.*, and copy of appeal bond filed Sept. 18, 1888.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 14th day of February, A. D. 1889.

GEO. F. SHARITT, *Clerk.*

224 In the Circuit Court of the United States, District of Kansas.

THE FARMERS' LOAN AND TRUST CO., Complainant,
vs.
THE CITY OF CLAY CENTER, Kansas, and THE CLAY CENTER WATER CO., Defendants.

The Hon. C. G. Foster, one of the judges of the circuit court of the United States for the district of Kansas, to the Farmers' Loan and Trust Co., Greeting:

Whereas the said City of Clay Center, Kansas, has lately appealed to the Supreme Court of the United States from the decree lately rendered in the circuit court of the United States for the district of Kansas, made in favor of the said complainant, and have filed the security required by law and by order of the court in that behalf to supersede the enforcement of the said decree, you are therefore cited to appear before the said Supreme Court, in the city of Washington, on the second Monday of October, 1888, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, in the city of Topeka and said district of Kansas, in the 8th circuit, the 18th day of September, A. D. one thousand eight hundred and eighty-eight.

C. G. FOSTER, *Judge.*

225 We hereby acknowledge service of the above citation this 18th day of August, 1888.

ROSSINGTON, SMITH & DALLAS,
Solicitors for Complainant.

226 [Endorsed:] No. 6012. U. S. circuit court. The Farmers' Loan and Trust Co., plaintiff, *vs.* The City of Clay Center and The Clay Center Water Co., defendants. Citation. Filed Sept. 18, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy. Johnson, Martin & Keeler, solicitors for defendant Clay Center.

Endorsed on cover: Case No. 13,507. Kansas C. C. U. S. No. 339. The City of Clay Center, Kansas, appellant, *vs.* The Farmers' Loan and Trust Company. Filed March 8th, 1889.

Office Supreme Court U. S.
FILED,
MAR 9 1889
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE CITY OF CLAY CENTER, *Appellant*,

v.

THE FARMERS LOAN & TRUST COMPANY, *Appellee.*

MOTION, NOTICE, AND BRIEF OF APPELLEE.

ROSSINGTON, SMITH & DALLAS,
Attorneys for Appellee.

W. H. ROSSINGTON, *of Counsel.*

THE GEO. W. CRANE PUBLISHING CO., TOPEKA, KANSAS.

In the Supreme Court of the United States.

THE CITY OF CLAY CENTER, *Appellant*,
v.
THE FARMERS LOAN & TRUST COMPANY, *Appellee*.

MOTION.

Now comes the Farmers Loan & Trust Company, appellee, and moves the court here to dismiss the appeal heretofore taken and allowed by the Circuit Court of the United States in the above-entitled cause, for the following reasons, to wit:

First. Because the decree in this suit was rendered by said court, and duly entered of record more than thirty days prior to the commencement of the instant term of this court, or more than thirty days prior to the second Monday in October, 1888, and upon the rendition of said decree an appeal for the same was prayed for and allowed by the court and included in said decree, and notwithstanding the said appellant has not docketed said cause and filed the record thereof with the clerk of this court within the first six days of this term, nor at all, said appellee having filed a complete record of said cause in this court for the purpose of this motion.

Second. Because, as appears from the record of said cause, (a transcript of which, comprising all the pleadings and proof, and all orders, and the final decree made and rendered by said trial court, duly certified by the clerk of the Circuit Court of the United States for the District of Kansas, and hereunto by said appellant produced and filed in said Supreme Court,) this court is without jurisdiction to hear and determine said appeal for the reason that the matter in dispute in said suit, exclusive of costs, is less than the sum or value of $5,000.

W. H. ROSSINGTON,
Attorney for Appellee.

In the Supreme Court of the United States.

THE CITY OF CLAY CENTER, *Appellant*,
v.
THE FARMERS LOAN & TRUST COMPANY, *Appellee.*

NOTICE OF MOTION.

To the City of Clay Center, and Messrs. Johnson, Martin & Keeler, its Attorneys of Record:

GENTLEMEN—You will please take notice that The Farmers Loan & Trust Company, appellee, in the appeal recently allowed by the court in the case wherein The Farmers Loan & Trust Company was complainant, and you, said city of Clay Center, were one of the defendants, will present the motion hereunto attached for allowance to the honorable the Supreme Court of the United States, on Monday, the 11th day of March, 1889, or as soon thereafter as the same can be heard; and will also file the accompanying brief on the second ground of said motion; at which time and place you may be present and heard, if you so desire, in resistance of said motion.

Yours very respectfully,

W. H. ROSSINGTON,
Attorney for said Appellee.

Service of the above notice, and brief appended, accepted, this 11th day of February, 1889.

JOHNSON, MARTIN & KEELER,
Attorneys for Appellant.

In the Supreme Court of the United States.

THE CITY OF CLAY CENTER, *Appellant*,
v.
THE FARMERS LOAN & TRUST COMPANY,
Appellee.

BRIEF OF APPELLEE ON MOTION TO DISMISS THE APPEAL IN THE ABOVE CAUSE.

THIS was a suit brought by The Farmers Loan & Trust Company, as Trustee, to establish the validity of a clause in a certain contract or ordinance whereunder the city of Clay Center was liable to pay from time to time certain hydrant rental to the trustee, to be applied in payment of the interest on certain bonds secured by the trust conveyance, and to recover under said provision of the contract two certain installments of hydrant rental overdue, which, with interest, amounted at the time of the rendition of the decree to four thousand and forty-two dollars and sixty-five cents. The court found for the complainant, and entered a decree against the city of Clay Center for the sum of four thousand and forty-two dollars and sixty-five cents. This decree was rendered on the 7th day of August, 1888, and entered on the records of the court on the 8th day of August, 1888. At the time of the rendition of the decree, an appeal to this court was prayed for by said defendant, and by the court allowed

and embodied in said decree, and a supersedeas bond of eight thousand dollars was fixed by the court.

This bond was afterwards duly executed, but the records of the court negative the fact of the performance of the duty required by rule IX of this court, namely: That the appellant shall docket the case and file the record thereof with the clerk of this court within the first six days of the term.

But the appellee has filed a complete record of the case and caused the same to be printed, and moves the court to dismiss the appeal upon the additional ground appearing from such record, that the matter in dispute, exclusive of costs, does not exceed, but in fact falls short of, the sum of five thousand dollars. Believing that the court, having the full record, pleadings and proof and decree of the trial court before it — in fact every paper or document or element of record which could be included in the appeal by the appellant — will not put us to the necessity of two motions, or delay us unnecessarily in the enforcement of our rights, when their attention is called to the want of jurisdiction, we have included in our motion to dismiss the additional jurisdictional ground, and to entitle us to a hearing have caused the record to be printed, and have duly notified the appellant, and accompanied our notice with a copy of the motion and of this brief.

A brief statement of the nature of the suit and the issues involved, we give for the convenience of the court, and the more ready elucidation of the single point involved in our motion:

On the 24th day of January, 1884, the city of Clay Center entered into a contract with one John E. Bonebrake, in pursuance of an ordinance previously passed, to

provide for a system of water works and to supply water to the city of Clay Center and the inhabitants thereof. This ordinance was embodied in and became a part of the contract, whereby the city covenanted with said John E. Bonebrake, and his assigns, to grant certain franchises for supplying the inhabitants of the city with water for domestic uses and the city of Clay Center with water for fire protection. Definite specifications were fixed for the construction of these water works, in the ordinance, and they were subject to the acceptance of the city. John E. Bonebrake assigned his rights to a corporation formed for the purpose of completing the water works, known as the Clay Center Water Company, and the same were completed and accepted by the city.

The main consideration for the expenditure of money on the part of Bonebrake and his assigns, in the construction of the works for a public and private supply of water to Clay Center, was an agreement in said ordinance, on the part of the city, to pay an annual rental for a certain number of fire hydrants. Section 9 of the ordinance, embodied in the contract, was as follows:

"It is hereby agreed, by and between the said John E. Bonebrake, his successors and assigns, and the city of Clay Center, that in the event it be deemed necessary, in the construction or extension of said water works, to issue first mortgage bonds upon the said water works property or extensions — either or all — that so much of the hydrant rental to be paid by the city of Clay Center, under the provisions of this ordinance, as will fully pay the interest on said bonds, shall be paid the holders of such bonds, by their trustee, semi-annually, on the first days of January and July in each year, until such bonds are paid; and that the balance of the hydrant rental which the city of Clay Center agrees to pay shall be paid to John E. Bonebrake, his successors or assigns.

"It being understood, that the hydrant rental which the

city of Clay Center agrees to pay to the said John E. Bonebrake, his successors and assigns, for fire protection, or so much of said amount as shall be necessary to pay the interest on such bonds, shall be set aside and paid to the trustee of such bonds, and by him used exclusively and only for the payment of interest upon said bonds, when, and so long, as the same shall become due and payable.

"When such bonds are fully paid and canceled, then the hydrant rental due from the city shall be paid, in full, to John E. Bonebrake, his successors and assigns.

"But in no event shall the city of Clay Center pay to said trustee for such interest a sum greater than the amount agreed to be paid John E. Bonebrake, his successors and assigns.

"*And provided further*, That the said city shall in no case become liable for the misappropriation of any money paid to said trustee. If there be no such trustee, such payment may be made to the owners of said bonds."

This suit was brought to establish and enforce this liability with respect to two installments of hydrant rental which the city had failed to pay to the trustee.

It appears by the record, (see page ——,) that the Clay Center Water Company, for the purpose of borrowing money to complete the construction of said water works, issued sixty bonds of one thousand dollars each, secured by a trust deed of the franchises and property of the water company; that The Farmers Loan & Trust Company, as the trustee named in said trust deed, accepted the trust and certified and issued the bonds.

It further appears of record, (see page ——,) that the trustee was recognized by the Mayor and Council of the City of Clay Center, first, by receiving and placing on file a notification of the appointment of the trustee; and second, by the payment of certain installments of hydrant rental under the contract. But the city failed to pay the installments of hydrant rental falling due re-

spectively on January and July of the year 1886, whereupon the trustee brought suit to establish and enforce the provisions of the contract, and to collect this hydrant rental.

At the time the suit was commenced, it appears by the terms of the contract no further or additional sum was due from the city to the trustee, or could be claimed by the trustee; and it is a fact apparent that the hydrant rental had only a potential existence until it was earned by the water company by a continuing supply of water under the terms of the contract, and in the performance of its covenants and agreements in that behalf.

The only element of implied liability on the part of the city to the bondholders, or to the trustee, The Farmers Loan & Trust Company, in their behalf, was by virtue of the granting clause of the trust deed, which assigned and transferred to the bondholders in express terms the right to collect the hydrant rental as part of the security for the interest upon the bonds. It was inadequate at the time of the commencement of this suit to wholly meet that demand; and the residue of interest was collectible from the water company. We claim, therefore, that the matter in dispute in this cause does not exceed, exclusive of costs, the amount claimed in the bill and awarded by the decree.

We think the exact point has been decided by this court in the case of *Elgin v. Marshall*, 106 U. S. 578. In that case the contention was, that although the judgment, being upon coupons detached from municipal bonds, was less than the jurisdictional amount, it was conclusive as an estoppel against the validity of the bonds and other coupons held by the plaintiff considerably in excess

of five thousand dollars, and hence the jurisdictional amount was in dispute. It seems to us that there is a perfect analogy between that case and this, if it shall be contended, as we presume it will be by the appellant, that this judgment settles and determines the duty of the city in the future in the matter of the payment of hydrant rental. Certainly the bonds given by the water company were not in controversy in this suit—neither were the franchises; and even if the latter might be said to be incidentally in controversy, their value is not shown upon the record. The fruits of the hydrant rental had no existence for any purpose until they were earned: and *non constat* the hydrant rental was to last as long as the franchises, the water company might fail in its duty to furnish the supply of water required under the terms of the contract, and therefore would be entitled to recover no hydrant rental from the city. Such as the water company had earned, however, and was entitled to receive, and had not been paid, it might go into court and collect, or the trustee might collect it, as in this case, under the terms of the compact made for its benefit; but no cause of action existed, and no standing in court could be had by either the water company or trustee, except upon accrued water rentals; that being the case, the matter in dispute is of necessity confined to the hydrant rental sued for.

It is true that the city denied the validity of this contract or of the ordinance, but the record shows that its denial was limited to the question of authority of the municipality to pass the ordinance, or of its officers to execute the contract, because the ordinance was passed at a special meeting of the council, and the mayor was authorized to sign the contract at a similar meeting,

which meetings were not called in strict conformity to the law in that behalf. Of course, our bill recited certain waivers and ratifications upon the part of the city, and the court therefore held the contract binding upon the city, and gave us a money decree for what we asked, and for no more than we asked; we were not entitled to, and could under no circumstances receive, more.

The case of *Ross, Adm'r, v. Prentis*, 3 How. 771, is also in point.

See also:

Gray v. Blanchard, 97 U. S. 564.

Bank Ass'n v. Ins. Ass'n, 102 U. S. 121, and cases cited by the court approvingly.

In the case of *Hilton v. Dickinson*, 108 U. S. 165, which is a case reviewing this whole subject, this court holds that, on appeal by defendant, the sum of the judgment against him governs the jurisdiction when no affirmative relief is asked. In this case, no cross bill was filed nor issue framed beyond that which was necessary to a proper resistance of the money recovery sought by, and which was the exclusive purpose of, the suit.

The principle decided in *Elgin v. Marshall* and *Hilton v. Dickinson*, supra, has been repeatedly reaffirmed in recent decisions of this court. See the following cases:

Opelika City v. Daniel, 109 U. S. 108.

Henderson v. Wadsworth, 115 U. S. 204.

Hassall v. Wilcox, ibid. 598.

Bowman v. Chicago & N. W. R. R. Co., ibid. 61.

Bruce v. Manchester & Keene R. R., 117 U. S. 511.

N. Y. Elevated R. R. v. Fifth Nat'l Bank, 118 U. S. 608.

Gibson v. Shufeldt, 122 U. S. 27.